

## **Explanatory Memorandum to The Plant Health (Wales) (Amendment) Order 2014**

This Explanatory Memorandum has been prepared by the Natural Environment & Agriculture Team within the Natural Resources and Food Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Wales) (Amendment) Order 2014.

Minister for Natural Resources and Food

**5 March 2014**

## 1. Description

This Order amends the Plant Health (Wales) Order 2006 (S.I. 2006 No. 1643 (W 158)) (“the PH Order”), which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It strengthens the existing control measures against *Ceratocystis fimbriata* f. spp. *platani* Walter (a cause of plane tree wilt) and *Cryphonectria parasitica* (Murrill) Barr (a cause of sweet chestnut tree blight) and extends the existing statutory notification scheme for certain tree species to include pine trees. It also implements a number of Commission Implementing Decisions introduced by the EU as well as making other minor amendments to the PH Order.

## 2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

## 3. Legislative background

In order to amend the Plant Health (Wales) Order 2006, subordinate legislation is required. Sections 2 and 3(1) of the Plant Health Act 1967 permit a competent authority to make such orders as they think expedient to prevent the introduction and spread of pests within Great Britain. Section 1(2)(b) of the Plant Health Act 1967 provides that the competent authority for the purposes of this Act in relation to Wales are the Welsh Ministers.

This instrument will follow the negative resolution procedure.

## 4. Purpose & intended effect of the legislation

Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community<sup>1</sup> (“the Plant Health Directive”) establishes the EU plant health regime. The Directive (and, therefore, the PH Order) is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. The Plant Health Directive is implemented in Wales by the PH Order and by the Plant Health (Forestry) Order 2005 (S.I. 2005 No. 2517) which extends to Great Britain. Similar but separate legislation to the PH Order operates in England, Scotland and Northern Ireland.

Existing measures in the PH Order provide for the control of many harmful organisms affecting tree genera. However, a report published by the Tree Health and Plant Biosecurity Expert Taskforce<sup>2</sup> has recommended that biosecurity should be strengthened to reduce risks at the border and within the UK. Recommended measures include timely consideration of EU Protected Zone status to protect against new threats before they arrive, notification of the import of high-risk plants and monitoring of threats including pathways into the UK to take rapid action where necessary.

As a result of ongoing monthly reviews of new and revised plant health threats (and taking into account the recommendations from the Task Force report), the Plant Health Risk group has recommended strengthening existing measures aimed at protecting plane and sweet chestnut trees by requiring that material entering the UK comes from areas free from specific high risk diseases. These issues have also been identified as a priority during development of a UK plant health risk register, which was one of the recommendations arising from the Task Force.

Plane trees are regulated by the Plant Health Directive, with protection against *Ceratocystis platani* (Plane wilt), a serious disease of plane trees which has killed tens of thousands of plantation trees and street trees in the eastern United States, California and southern Europe. Infected trees typically die within 3-6 years. The disease is already present in Europe and

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<sup>1</sup> This Directive can be found at [http://europa.eu/eu-law/legislation/index\\_en.htm](http://europa.eu/eu-law/legislation/index_en.htm)

<sup>2</sup> The report can be found at <https://www.gov.uk/government/publications/tree-health-and-plant-biosecurity-expert-taskforce-final-report>

despite current EU wide legislation designed to limit its further spread, it is still spreading in France and other southern member states. Although there has been no spread to the UK to date, the outcome of a consultation on a risk analysis for the UK Plant Health Risk Register has concluded that there was an imminent threat of introduction of Plane wilt through infected plants or wood, even with the existing EU measure in place. Climate does not appear to be an impediment to survival of the pathogen here. The new measures introduced through this instrument will mean that movements of plane trees into and within Wales and from Wales to other Member States, will need to be accompanied by certain documentation confirming that they have been grown in a place of production in a country in which the disease is known not to occur or in an area designated by plant health authorities as free of the disease.

Sweet chestnut is also regulated by the Plant Health Directive, with protection against *Cryphonectria parasitica* (Chestnut blight), a harmful fungal disease. Additional requirements currently apply for movements into protected zones, including the UK, but these are restricted to wood and isolated bark. These requirements have proved deficient as infected planting material from France has caused outbreaks in the UK. The new measures introduced through this instrument will require that material, including seed, when introduced into or moved within Wales, or consigned from Wales to another Member State, to be accompanied by certain documentation confirming that the material comes from places of production in countries where Chestnut blight is known not to occur or from an area designated by plant health authorities as free from the disease.

Strengthened EU requirements are being pursued through a case for protected zone status for the UK in relation to plane wilt and extending the current protected zone against chestnut blight to the whole of the UK (currently the Isle of Man is excluded). New requirements for movements of sweet chestnut planting material into protected zones are also being sought.

Pine trees are at risk from *Dothistroma pini*, *Dothistroma septosporum* (fungi which cause a needle cast of conifers) and *Thaumetopoea pityocampa* (pine processionary moth). As well as damaging pines, the hairs of the pine processionary caterpillar larvae cause harmful reactions in humans and other mammals. *Dothistroma septosporum* is regulated by the EU Plant Health Directive, but it is present and spreading in parts of the EU (it is known to be present in some parts of the UK). *Dothistroma pini* is not regulated, but it is known to be present in certain other EU member states. The risk is that there could be further introductions and spread of these harmful organisms, including the possibility of new strains emerging. The PH Order requires that imports of pine trees can only come into Wales from specific designated *Dothistroma* disease-free sites. However, we currently have no means of knowing the precise details of consignments arriving into Wales from other parts of the EU and so there remains a risk that infected trees could be imported. The pine processionary moth is currently unregulated, but is spreading northwards through France. There have been no interceptions or findings in the UK and it is unclear whether the UK climate would be suitable for its establishment. Work is in progress to assess the situation further but notification of imports will help raise awareness, generate evidence about the scale of trade and facilitate inspections. General powers are available to take action in the event of finding the pests. The Plant Health (Wales) (Amendment) (No. 2) Order 2013 (S.I. 2013 No. 2939 (W. 287)) introduced a statutory notification scheme for imports of plane, oak, sweet chestnut and ash trees. This was in response to the threat posed to these genera by certain organisms present elsewhere in Europe coming to Wales through the import of infected trees. This instrument extends the existing statutory notification scheme to require notification of imports of pine planting material.

This instrument also adopts a number of EU instruments 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 introduces new measures to address risks presented by other pests and diseases. The changes are described in more detail below.

- Commission Implementing Decision 2013/253/EU which amends the list of disease free countries and areas set out in Decision 2006/473/EC in respect of third countries and certain areas of third countries recognised as free from certain specific diseases of citrus fruit.
- Commission Implementing Decision 2013/67/EU which amends the emergency measures set out in Decision 2004/416/EC in respect of certain citrus fruit originating in Brazil. Following a review of available information the temporary emergency measures against *Xanthomonas campestris* (Citrus canker) which restricted imports of certain citrus fruits from Brazil have been withdrawn.
- Commission Implementing Decision 2012/756/EU which introduces emergency measures to prevent the further introduction into and spread within the Community of *Pseudomonas syringae* pv. *actindiae* Takikawa, Serizawa, Ichikawa, Tsuyumu and Goto (the casual agent of Kiwi canker). The Order adds *Pseudomonas syringae* pv. *actindiae* Takikawa, Serizawa, Ichikawa, Tsuyumu and Goto to the list of prohibited bacteria in the PH Order and introduces new requirements for the import and movement of susceptible plants.
- Commission Implementing Decision 2012/697/EU which introduces emergency measures to prevent the introduction and spread of *Pomacea* (Perry) (Apple snail) which causes harmful effects to aquatic plants. The Order adds *Pomacea* (Perry) to the list of prohibited molluscs in the PH Order and introduces new requirements for the import and movement of susceptible plants.
- Commission Implementing Decision 2012/270/EU which introduces emergency measures to prevent the introduction and spread of *Epitrix cucumeris*, *Epitrix similaris*, *Epitrix subcrinita* and *Epitrix tuberis* (Tuber flea beetle) which causes harmful effects to potato tubers. The Order adds *Epitrix cucumeris*, *Epitrix similaris*, *Epitrix subcrinita* and *Epitrix tuberis* to the list of prohibited insects, mites and nematodes in the PH Order and introduces new requirements for the import and movement of susceptible plants.
- Commission Implementing Decision 2012/138/EU which repeals Decision 2008/840/EC and amends the measures to prevent the introduction and spread of *Anoplophora chinensis* (Citrus longhorn beetle). Certain plant species which were previously not covered by Decision 2008/840/EC are now subject to restrictions and others which were previously covered are now excluded.
- Commission Implementing Decision 2012/219/EU which recognises Serbia as free from *Clavibacter michiganensis* (Potato ring rot). The previous prohibition on the import of potatoes not intended for planting from Serbia is therefore removed.

This instrument also makes minor amendments to the Plant Health (Wales) Order 2006 to take account of changes to Commission Regulation (EC) 690/2008 recognising protected zones exposed to particular plant health risks in the EU.

## 5. Consultation outcome

This legislation implements both domestic policy and EU legislation.

Domestic Policy: Stakeholders have supported the need for stronger measures through consultation on initial risk assessments for these issues and via stakeholder workshops which were arranged to help develop a plant health risk register. The recommendations arising from these workshops were supported by stakeholders at the Tree Health Summit held by the Secretary of State on 11 July 2013.

EU legislation: The views of stakeholders were sought and taken into account during negotiations with the Commission and other Member states. Decision 2012/270 on *Epitrix* sp. in particular represents the outcome of a UK initiative to ensure that these harmful organisms were regulated at the EU level, before they had the opportunity to spread and establish. This initiative was pursued in collaboration with stakeholders from the range of sectors potentially affected by this organism.

## **6. Regulatory Impact Assessment (RIA)**

There has been no regulatory impact assessment undertaken as the amendments to the PH Order are technical changes only. There is no impact on charities or voluntary bodies foreseen or on the public sector.

The Food and Environment Research Agency (FERA), is an executive agency of the Department for Environment, Food and Rural Affairs (DEFRA) and is responsible in Wales, on behalf of the Welsh Ministers for provision of plant health statutory services to facilitate trade and prevent the introduction of plant pests and diseases. FERA have confirmed that since April 2012 there have been no notifications for the import of plane, sweet chestnut and pine trees into Wales from Third countries. It would, therefore, not have been beneficial to undertake a Regulatory Impact Assessment in Wales.