

2006 No. 2307

PLANT HEALTH, ENGLAND

The Plant Health (England) (Amendment) Order 2006

Made - - - - *23rd August 2006*

Laid before Parliament *25th August 2006*

Coming into force - - *1st October 2006*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 2 and 3(1) and (4) of the Plant Health Act 1967^(a) and now vested in him^(b):

Title and commencement

1. This Order may be cited as the Plant Health (England) (Amendment) Order 2006 and comes into force on 1st October 2006.

Amendment of the Plant Health (England) Order 2005

2.—(1) The Plant Health (England) Order 2005^(c) is amended as follows.

(2) In article 2(1)—

(a) after the definition of “Customs Act”, insert—

““Decision 2006/473/EC” means Commission Decision 2006/473/EC^(d) recognising certain third countries and certain areas of third countries as being free from *Xanthomonas campestris* (all strains pathogenic to Citrus), *Cercospora angolensis* Carv. et Mendes and *Guignardia citricarpa* Kiely (all strains pathogenic to Citrus);”;

(b) in the definition of “Directive 2000/29/EC” after “2005/16/EC,” insert “2005/77/EC^(e), 2006/35/EC^(f),”;

(c) for the definition of “Europe”, substitute—

““Europe” includes Belarus, the Canary Islands, Georgia, Kazakhstan (except the area east of the Ural river), Russia (except the regions of Tyumen, Chelyabinsk, Irkutsk, Kemerovo, Kurgan, Novossibirsk, Omsk, Sverdlovsk, Tomsk, Chita, Kamchatka, Magadan, Amur and Skhalin, the territories of Krasnoyarsk, Altay, Khabarovsk and Primarie, and the republics of Sakha, Tuva and Buryatia), Ukraine and Turkey (except the area east of the Bosphorus Strait known as Anatolia);”;

(a) 1967 c. 8; sections 2(1) and 3(1) were amended by the European Communities Act 1972 (c. 68), Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48).

(b) Under article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 which remained vested in that Minister at the date of the Order were transferred to the Secretary of State.

(c) S.I. 2005/2530.

(d) OJ No. L 187, 8.7.2006, p. 35, as corrected in OJ No. L 196, 18.7.2006, p. 26.

(e) OJ No. L 296, 12.11.2005, p. 17.

(f) OJ No. L 88, 25.3.2006, p. 9; and see the associated Commission Directive 2006/36/EC, OJ No. L 88, 25.3.2006, p. 13.

- (d) in the definition of “protected zone”, before “means” insert “unless expressly provided otherwise,”.
- (3) At the beginning of article 2(3), add “Unless expressly provided otherwise,”.
- (4) In article 12(2)—
 - (a) after sub-paragraph (a), insert—
 - “(aa) if in the course of its consignment to a protected zone listed in the second column of Annex I Part B of Directive 2000/29/EC, that the relevant material is free from any plant pest of a description specified in the first column opposite the reference to that protected zone;”; and
 - (b) after sub-paragraph (c), insert—
 - “(cc) if listed in the first column of Annex III Part B of Directive 2000/29/EC, that the relevant material is not in the course of its consignment to a protected zone listed in the second column opposite the reference to the relevant material;”.
- (5) In article 22, for paragraph (2), substitute—
 - “(2) The Secretary of State may exempt from the prohibitions on movement in article 21(1) or (2) the movement of relevant material which originates in Great Britain where he is satisfied that—
 - (a) the movement is made locally by small producers or processors whose entire production and sale of such material is intended for final usage by persons on the local market who are not professionally involved in plant production; and
 - (b) there is no risk of the spread of plant pests.”.
- (6) In article 24, after paragraph (4), add—
 - “(5) Any person who—
 - (a) is the final user of relevant material; and
 - (b) uses the relevant material in the course of a trade or business,
 shall retain the plant passport which accompanies the relevant material in accordance with article 21 for one year.”.
- (7) In article 29(1), omit “any” and for “his” substitute “any”.
- (8) In article 42—
 - (a) in paragraph (1), omit “and shall as soon as reasonably practicable after giving such notice confirm it in writing”; and
 - (b) after paragraph (1), insert—
 - “(1A) Where a person gives notice in accordance with paragraph (1) orally, he shall confirm it in writing as soon as reasonably practicable.”.
- (9) In article 43—
 - (a) in paragraph (1), omit “and shall as soon as reasonably practicable after giving such notice confirm it in writing”; and
 - (b) after paragraph (1), insert—
 - “(1A) Where a person gives notice in accordance with paragraph (1) orally, he shall confirm it in writing as soon as reasonably practicable.”.
- (10) In article 45(1)—
 - (a) after paragraph (vi) of sub-paragraph (a), insert—
 - “(viA) article 21;”; and
 - (b) after paragraph (xi) of sub-paragraph (a), insert—
 - “(xiA) article 39(1) to (4);”.
- (11) After item 15 of “Insects, mites and nematodes” in Schedule 1, Part A, insert—

“15a. *Dryocosmus kuriphilus* Yasumatsu”.

(12) In item 15 of “Viruses and virus-like organisms” in Schedule 2, Part B, for the words after “evidence” to the end of that item, substitute “that they are intended for sale to professional tobacco producers, *Solanum melongena* L., or *Solanum tuberosum* L., intended for planting”.

(13) After “New Guinea hybrids” in—

- (a) item 15 of “Viruses and virus-like organisms” in Schedule 2, Part B,
- (b) paragraph 7(a) of Schedule 6, Part A,
- (c) paragraph 7(a) of Schedule 7, Part A, and
- (d) paragraph 5(a) of Schedule 8, Part A, insert “of”.

(14) In item 8 of Schedule 3, after “Algeria,” insert “Bulgaria,”.

(15) In Schedule 4, Part A—

- (a) in the third column of item 6, for “items 5, 60, 61 and 64,” substitute “items 5, 6a, 60, 61, and 64,”;

(b) after item 6 insert—

“6a Plants, other than fruit or seeds, of *Castanea* Mill., intended for planting, originating in any third country

Without prejudice to the requirements in items 5, 6, 51, 55, 60 and 61, the plants shall be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which states under the rubric “Additional declaration” that they have been grown throughout their life in places of production:

(a) in countries where *Dryocosmus kuriphilus* Yasumatsu is not known to occur; or

(b) in an area or areas, established by the national plant protection organisation in the country of origin, as being free from *Dryocosmus kuriphilus* Yasumatsu, in accordance with ISPM No. 4, and that area shall be mentioned in the phytosanitary certificate or phytosanitary certificate for re-export under the rubric “Place of origin”;

(c) for the wording in the third column of item 12, substitute—

“Without prejudice to the requirements in items 19, 21 to 23, 27 to 30, 60, 61 and 64, the plants shall be accompanied by an official statement that they originate in a country known to be free from *Monilinia fructicola* (Winter) Honey”;

- (d) in the third column of item 15, after “(all strains pathogenic to *Citrus*)” in paragraph (a), insert “as referred to in Article 1(1) of Decision 2006/473/EC”;
- (e) in the third column of item 15, after “(all strains pathogenic to *Citrus*)” in paragraph (b), insert “as referred to in Article 1(2) of Decision 2006/473/EC”;
- (f) in the third column of item 16, after “Carv. et Mendes” in paragraph (a), insert “as referred to in Article 2 of Decision 2006/473/EC”;
- (g) in the third column of item 17, after “(all strains pathogenic to *Citrus*)” in paragraph (a), insert “as referred to in Article 3(1) of Decision 2006/473/EC”;
- (h) in the third column of item 17, after “(all strains pathogenic to *Citrus*)” in paragraph (b), insert “as referred to in Article 3(2) of Decision 2006/473/EC”;
- (i) in the third column of item 29, after “vegetation” in paragraph (b), substitute “and” for “or”; and
- (j) in the second column of item 37, after “*Solanaceae*,” insert “intended for planting,”.

(16) In Schedule 4, Part B—

- (a) in the third column of item 4, for “The plants shall be accompanied by an official statement that” , substitute “Without prejudice to the requirements in item 4(a), the plants shall be accompanied by an official statement that”; and

(b) after item 4 insert—

“4a

Plants, other than fruit or seeds of *Castanea* Mill., intended for planting

Without prejudice to the requirements in item 4, the plants shall be accompanied by an official statement that:
(a) they have been grown throughout their life or since their introduction into the Community in a place of production in a member State where *Dryocosmus kuriphilus* Yasumatsu is not known to occur; or
(b) they have been grown throughout their life or since their introduction into the Community in a place of production in an area or areas, established by the responsible official body in a member State, as being free from *Dryocosmus kuriphilus* Yasumatsu, in accordance with ISPM No. 4”.

(17) In paragraph 1(c) of Schedule 5, Part A, for “*Capsicum* spp. *Helianthus annuus* L., *Lycopersicon lycopersicum* (L.) Karsten ex Farw.,” substitute “*Solanaceae*, *Helianthus annuus* L.,”.

(18) In paragraph 2 of Schedule 5, Part B, after “6” insert “of Part A”.

(19) In paragraph 1 of Schedule 6, Part A and of Schedule 7, Part A, after “*Amelanchier* Med.,” insert “*Castanea* Mill.,”.

(20) In paragraph 7(a) of Schedule 6, Part A and of Schedule 7, Part A, omit “*Castanea* Mill.,”.

(21) In paragraph 7(d) of Schedule 6, Part A and of Schedule 7, Part A, omit “certified”.

(22) In paragraph 1 of Schedule 8, Part A, omit “*Camellia* L.,”.

(23) For paragraph 1 of Schedule 8, Part B, substitute—

“1. Plants, other than seeds, intended for planting, other than—

(a) *Clausena* Burm. F. or *Murraya* Koenig ex L.; and

(b) *Palmae* (not including *Phoenix* spp.) originating in Algeria or Morocco.”.

(24) In paragraph 7(i) of Schedule 9, Part A, for “the registration number of” substitute “a code for”.

(25) In paragraph 1 of Schedule 17, Part B, after “shall”, on the first occasion when it occurs, insert “, where he considers it necessary to ensure that any provision of paragraph 6 is complied with,”.

23rd August 2006

Barry Gardiner
Parliamentary Under Secretary of State,
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 (SI 2005/2530) (“the principal Order”) so as to implement—

Commission Directive 2005/77/EC amending Annex V to 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 in the Community (OJ No. L296, 12.11.2005, p.17);

Commission Decision 2005/870/EC recognising Bulgaria as being free from *Clavibacter michiganensis* (Smith) Davis *et al.* spp *sepedonicus* (Spieckerman and Kotthoff) Davis *et al* (OJ No. L 319, 7.12.2005, p.9);

Commission Directive 2006/35/EC amending Annexes I to IV to 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 (OJ No. L88, 25.3.2006, p.9);

Commission Decision 2006/473/EC recognising certain third countries and areas as being free from *Xanthomonas campestris* (all strains pathogenic to Citrus), *Cercospora angolensis* Carv. et Mendes and *Guignardia citricarpa* Kiely (all strains pathogenic to Citrus) (OJ No. L 187, 8.7.2006, p. 35);

Commission Decision 2006/464/EC on provisional emergency measures to prevent the introduction into and the spread within the Community of *Dryocosmus kuriphilus* Yasumatsu (OJ No. L 183, 5.7.2006, p. 29).

The Order also makes minor amendments to the principal Order.

The main changes which this Order makes to the principal Order are to—

- (a) amend and insert certain definitions (article 2(2));
- (b) amend the matters as to which an inspector has to be satisfied before he can discharge from an area of plant health control any material which is destined for a protected zone in Annex IB or Annex IIIB of Directive 2000/29 (article 2(4));
- (c) amend the local movement exemption to make it a discretionary exemption which takes account of plant health risk (article 2(5));
- (d) require certain commercial users of plant material to retain plant passports for one year (article 2(6));
- (e) amend the provision for authorising the granting of plant passports to enable a registered plant trader to issue passports for the movement of relevant material from any premises (article 2(7));
- (f) amend the requirements to notify pests to make it clear that the obligation to confirm a notice in writing only applies where that notice was given orally (article 2(8) and (9));
- (g) make it an offence to fail to comply with article 21 or article 39(1) to (4) of the principal Order (article 2(10));
- (h) prohibit the landing in and spread within England of *Dryocosmus kuriphilus* Yasumatsu and impose additional requirements on the landing and movement of *Castanea* Mill intended for planting (article 2(11), (15) (a) and (b) and (16);
- (i) exempt tubers of *Solanum* L. which originate in Bulgaria from the prohibition on landing in England (article 2(14));
- (j) amend the provisions relating to countries and areas recognised as free from *Xanthomonas campestris*, *Cercospora angolensis* and *Guignardia citricarpa* (article 2(15)(d) to (h));

- (k) require seeds of all *Solanaceae* to be accompanied by a phytosanitary certificate (article 2(17));
- (l) require all seeds of *Helianthus annuus* L., *Lycopersicon lycopersicum* (L.) Karsten ex Farw. and *Phaseolus* L., to be accompanied by a plant passport (article 2(17));
- (m) reinstate the requirement for certain plants coming from Switzerland to be accompanied by a phytosanitary certificate (article 2(23)); and
- (n) limit the circumstances in which the Secretary of State is required to publish the demarcation of zones for the control of *Ralstonia solanacearum* (article 2(25)).

A transposition note has been prepared and placed in the library of each House of Parliament. Copies of the transposition note can be obtained from Plant Health Division, Defra, Foss House, Kings Pool, Peasholme Green, York YO1 7PX. A full regulatory impact assessment has not been produced for this Order as it has no impact on the costs for business.

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