

**EXPLANATORY MEMORANDUM TO THE  
PLANT HEALTH (ENGLAND) ORDER 2005**

**2005 No. 2530**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

The purpose of the Order is to prevent the introduction and spread of harmful plant pests and diseases. It revokes and consolidates with amendments the Plant Health (Great Britain) Order 1993 in its application to England. It also introduces changes to a number of Directives which amend the Plant Health Directive (adopted since the last amendment to the 1993 Order), in particular Council Directive 2002/89/EC concerning imports of plants and plant products from non-EU countries.

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

The instrument corrects the outstanding error previously reported by the JCSI against the Plant Health (Great Britain) Order 1993 in its 34<sup>th</sup> report of the session 1992-93 with regard to a prohibition on the growing of any potatoes. At Article 39(1) of the 2005 Order ‘derived from [potatoes grown in certain countries]’ has been changed to ‘produced from..’.

- 4. Legislative Background**

- 4.1 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 (“the Plant Health Directive”) establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Directive has been implemented in Great Britain, for non-forestry matters, by the Plant Health (Great Britain) Order 1993. Similar but separate legislation operates in Northern Ireland.
- 4.2 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. The main text of the Directive was substantially amended by Council Directive 2002/89/EC of 28 November 2002. Among the changes introduced was clarification of the existing requirement for mandatory examinations (documentary checks, identity checks and plant health checks) on certain plants and plant produce imported from non-EU countries, obligations to charge fees for

these inspections, and a requirement for advance notification of the arrival of consignments from the importer to the plant health service.

- 4.3 The new Order will also consolidate the various amendments made to the existing Order since it was introduced in 1993, make minor changes to our implementation of existing Community measures, implement amendments to the products subject to the EU Switzerland agreement on trade in agricultural products, and allow the official seed label of certain types of seed to serve as a plant passport indicating the plant health requirements have been met.
- 4.4 Defra inspectors already carry out these examinations using powers under the Plant Health (Great Britain) Order 1993. However that Order does not contain powers to charge fees, or to require advance notification. The Plant Health (Import Inspection Fees)(England) Regulations 2005, which came into force on 20<sup>th</sup> April 2005, introduces powers to charge fees for import inspections. The current Order introduces a requirement on importers to provide advance notification of the arrival of consignments of plants and plant produce which need to be checked.

## **5. Extent**

This instrument applies to England only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- 7.1 Several of the changes introduced by Directive 2002/89 also address concerns raised by the Committee of Public Accounts in their report on “Protecting England and Wales from Plant Pests and Diseases” (44<sup>th</sup> report of session 2003-4). Controls are strengthened and the risk assessments leading to different levels of checks on different trades are made more transparent and consistent on an EU wide basis.
- 7.2 The changes affect primarily importers of controlled plants and plant produce; i.e. those that require a plant health (or phytosanitary) certificate when imported from non-EU countries. In broad terms this includes plants, potatoes, the major fruit other than bananas and grapes, cut flowers and some leafy vegetables.
- 7.3 A consultation on the proposal was held when it was published in 2001, and an update on the outcome of negotiations was provided in 2003. A consultation exercise seeking views in particular on the introduction of charges for plant health import inspections was launched on 9 July 2004 and ran until 12 October 2004. Meetings were held during the autumn of 2004 with interested trade organisations and individual importers.

7.4 The main concerns expressed during the consultation were that fees should not be greater than in other Member States, that delays to perishable shipments should be avoided, and that notification procedures should be as simple as possible. These concerns have been addressed. The standard fees in the Directive have been adopted as a temporary solution with a move to full-cost recovery after a year if they are not fully recovering costs. Over thirty trades have been proposed and accepted by the European Commission for checking at less than 100%, on the basis of their past compliance record. Additional staff have been recruited at the main points of entry to ensure that there are no disproportionate delays to consignments pending inspection. Finally it has been agreed that to avoid duplication of effort, consignments should be notified through extension and modification of an existing IT system which was developed for the Horticultural Marketing Inspectorate in collaboration with the fresh produce industry. Pending development of that system, use will be made of the import entry onto the Customs "CHIEF" database.

## **8. Impact**

A Regulatory Impact Assessment was prepared for the Plant Health (Import Inspection Fees)(England) Regulations 2005 which, along with changes in levels of enforcement, represents the major impact from the changes in the EC Directive. The present Order is largely a consolidation of existing technical amendments with no regulatory impact. The main element of new regulation is the requirement for advance notification of imports from non-EU countries. By using existing IT systems to avoid duplication of notification, significant additional impact should be avoided.

## **9. Contact**

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## TRANSPOSITION NOTE

### PLANT HEALTH (ENGLAND) ORDER 2005

This transposition note shows how the main elements of the following Community instruments have been implemented by the Plant Health (England) Order 2005.

These regulations do what is necessary to implement the following Community instruments, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

#### **(1) Council Directive 2002/89/EC**

<b>Article of Directive</b>	<b>Purpose</b>	<b>Implementation</b>
1(2)	Amendment to the definition of 'plant'	Article 2(1)
1(8) – adds Article 13(1) and (2) to Directive 2000/29	Inspection of material landed in the Community from third countries where that material is listed in Annex VB. Inspection to take place before the material is placed under certain customs procedures under the Community Customs Code	Article 10 and the provisions to which it refers
1(8) – adds Article 13(3) to Directive 2000/29	Member States to ensure they can inspect material landed in the Community from third countries where that material is not listed in Annex VB (including dunnage, spacers, pallets or packing material, actually in use in the transport of any cargo),	Article 13
1(8) – adds Article 13a(1) to Directive 2000/29	Mechanics of the inspections in Article 13(1) – what has to be inspected and the types of inspection, documentary, identity	Article 12(2)(g) documentary checks, article 12 (4) identity checks and article 12(3) plant health checks

	and plant health	
1(8) – adds Article 13a(3) to Directive 2000/29	Requirements regarding details to be included on phytosanitary certificates and who may issue such certificates	Article 15(2)(a) and (d) and definition of ‘national plant protection organisation’
1(8) – adds Article 13a(4) to Directive 2000/29	Requirement for the landing conditions in Annex IV which have been complied with to be endorsed on an accompanying phytosanitary certificate (where more than one alternative landing condition applies)	Article 15(3)
1(8) – adds Article 13b(1) to Directive 2000/29	Member State to ensure where they suspect material has not been declared to be Annex VB material (and so falling under the inspection requirements of Article 13(1)) such material should be inspected	Article 13
1(8) – adds Article 13b(2)(3) to Directive 2000/29	Sets out circumstances in which the inspection requirements in Article 13(1) do not apply	Article 11
1(8) – adds Article 13c(1)(b) to Directive 2000/29	Clarification of the requirement for importers of material listed in Annex VB to be registered	Article 26(1) and definition of ‘plant trader’ in article 2(1)
1(8) – adds Article 13c(1)(c)(i) to Directive 2000/29	Requirement that importers of material listed in Annex VB which is required to be inspected, refer to specified details on customs documents which relate to that material	Article 9(2)
1(8) – adds Article 13c(1)(c)(ii) to Directive 2000/29	Requirement to notify member State authorities of advance notification of material required to be inspected	Article 6

1(8) – adds Article 13c(2)(b) and (c) to Directive 2000/29	In the case of material landed in a member State from a third country, identity and plant health checks may be performed in that member State at the point of entry, the place close to the point of entry or an approved place of inspection	Article 10(1) and (2) and article 17
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**(2) Commission Directive 2004/103/EC**

<b>Article of Directive</b>	<b>Purpose</b>	<b>Implementation</b>
1(1) and (2)	Permits material which is required to be inspected under Art 13(1) of Directive 2000/29, to be inspected at an approved place of inspection. An approved place of inspection in the case of material consigned directly from a third country to GB is the point of entry or a place close by, and in the case of material which comes from a third country via another member State an approved place of inspection shall be a place within GB.	Art 10(1) and (2)(c) and 16(1)
1(3)	Requirements to be met when material is transported to an approved place of inspection to be inspected at that place	Article 16(2) and Schedule 13
2	Sets out an approval procedure – for applications to be made for a place to be an approved place of inspection and how approvals should be granted	Article 17
3	Requirement for an	Article 16(3)

	importer to give advance notification when he wishes an inspection of material to be performed at an approved place of inspection	
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### (3) Commission Directive 2004/105/EC

Article of Directive	Purpose	Implementation
2 and Annex II	Member States required to accept until 31 <sup>st</sup> December 2009 phytosanitary certificates and phytosanitary certificates for re-export in the format set out in the International Plant Protection Convention (IPPC) currently in force	Article 15(1)(a)(ii) and Schedule 10
1 and Annex I	Member states must accept phytosanitary certificates and phytosanitary certificates for re-export issued by contracting parties to the IPPC either in the format set out in the in the current IPPC or in the amendments set out in the 1997 text yet to come into force	Article 15(1)(a)(i) and Schedules 10 and 11

### (4) Commission Directive 2005/16/EC

Article of Directive	Purpose	Implementation
1 and Annex	Amendments to Annex VA of Directive 2000/29 to the list of seeds and bulbs for which a plant passport is required	Schedule 6, Part A, item 7(d) and Schedule 7, Part A, item (7)(d)

**(5) Commission Directive 2005/17/EC**

<b>Article of Directive</b>	<b>Purpose</b>	<b>Implementation</b>
1(1)	Permits plant passports for specified material (tubers of <i>Solanum tuberosum</i> , seeds of <i>Helianthus annuus</i> , <i>Lycopersicon lycopersicum</i> and seeds of <i>Medicago sativa</i> ) to comprise an official label which satisfies the requirements of other specified Community marketing / labelling regimes currently in place	Schedule 9, Part B
1(3)	Permits the title 'EEC-plant passport' on a plant passport until 31 <sup>st</sup> December 2005, and from that date requires the wording 'EC-plant passport' to be used	Schedule 9, item 7(a)

**(6) Commission Decision 2005/260/EC**

<b>Article of Decision</b>	<b>Purpose</b>	<b>Implementation</b>
1 and Appendix 1 annexed to Decision	Amend the list of species which are subject to special trade arrangements under the EC-Swiss Confederation Trade Agreement	Article 30 and Schedule 8