

**2010 No. 1510**

**PLANT HEALTH, ENGLAND**

**The Plant Health (England) (Amendment) Order 2010**

*Made* - - - - 28th May 2010

*Laid before Parliament* 4th June 2010

*Coming into force* - - 1st July 2010

The Secretary of State<sup>(a)</sup> makes the following Order in exercise of the powers conferred by sections 3 and 4(1) of the Plant Health Act 1967<sup>(b)</sup>.

**Title and commencement**

1. This Order may be cited as the Plant Health (England) (Amendment) Order 2010 and comes into force on 1st July 2010.

**Amendments to the Plant Health (England) Order 2005**

2. The Plant Health (England) Order 2005<sup>(c)</sup> is amended as follows.

**Article 20 (prevention of the spread of plant pests)**

3. In article 20(2) after “Part 6” insert “or 7”.

**Article 31 (examination, sampling and marking)**

4. In article 31(1), after “for the purpose of”, insert “determining whether any plant pest is present there (or for determining the distribution of any plant pest) or for the purpose of”.

**Article 38 (power to enter premises used wholly or mainly as a dwelling)**

5. For article 38, substitute—

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- (a) The functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 (c. 8) were, so far as exercisable in relation to Wales, transferred to the Secretary of State by article 2 of, and Schedule 1 to, the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272). Those functions were transferred from the Secretary of State to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The remaining functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).
- (b) 1967 c. 8; sections 2(1), 3(1), (2) and (5) and 4(1) were amended by section 4 of, and paragraph 8 of Schedule 4 to, the European Communities Act 1972 (c. 68). Section 2(2) was amended by section 177(1) of, and paragraph 12 of Schedule 4 to, the Customs and Excise Management Act 1979 (c. 2). Section 2(3) was inserted by article 2(1) of, and Schedule 1 to, S.I. 1990/2371. Section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48).
- (c) S.I. 2005/2530 as amended by S.I. 2006/2307, 2007/1893, 2950 & 3133, 2008/2411 & 2765 and 2009/587.

**“Power to enter premises used wholly or mainly as a dwelling**

38.—(1) Articles 31, 33 and 37 do not apply to admission to any premises used only as a private dwelling-house unless 24 hours’ notice of the intended entry has been given to the occupier, or the entry is in accordance with a warrant granted under this article.

(2) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises under article 31, 33 or 37 and—

- (a) admission has been refused, or a refusal is expected, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by signed warrant authorise an inspector to enter the premises, if necessary by reasonable force.

(3) A warrant granted under this article is valid for one month.

(4) An inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.”.

**Article 45 (offences)**

6. In article 45(1)(a)(a), for paragraphs (xiii) and (xiv), substitute—

- “(xiii) article 42(1);
- (xiv) article 43(1); or
- (xv) paragraphs 3, 4, 5 or 6 of Schedule 15;”.

**Schedule 15 (special measures for the control of Potato Cyst Nematode)**

7. For Schedule 15, substitute the text contained in the Schedule to this Order.

28th May 2010

*Henley*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

**SCHEDULE**

Article 7

**“SCHEDULE 15**

Article 39(6)

**Special measures for the control of European populations of Potato Cyst Nematode**

**Interpretation and application of Schedule 15**

1.—(1) In this Schedule—

“Directive 2007/33/EC” means Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC;

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(a) There are amendments to article 45(1)(a) that are not relevant to this Order.

“demarcated field” means a field in respect of which a notice served under paragraph 2 is in force.

(2) This Schedule applies when the Secretary of State confirms, following an official investigation for the purposes of Article 4 of Directive 2007/33/EC or an official survey for the purposes of Article 6 of that Directive, that a field is infested with a European population of Potato Cyst Nematode.

### **Demarcation of the field**

2.—(1) An inspector shall serve a notice in writing on the occupier or other person in charge of the field—

- (a) specifying the field to which the notice applies; and
- (b) demarcating the boundaries of that field.

(2) The notice may not be withdrawn until it is confirmed, pursuant to the re-sampling and testing measures set out in Section III(C) of Annex III to Directive 2007/33/EC, that Potato Cyst Nematode is no longer present in the field.

### **Prohibition on planting of potatoes**

3.—(1) No person may—

- (a) plant in a demarcated field any potatoes that are intended for the production of seed potatoes; or
- (b) plant or store in a demarcated field any plant listed in Annex I to Directive 2007/33/EC that is intended for replanting.

(2) But an inspector may authorise the planting of any plants listed in point 2 of Annex I to that Directive.

(3) An authorisation under this paragraph shall be by notice in writing and shall contain the measures set out in Section III(A) of Annex III to that Directive.

### **Suppression of Potato Cyst Nematode**

4. No person may plant in a demarcated field any potatoes that are not intended for the production of seed potatoes unless that person has taken all reasonable steps to suppress Potato Cyst Nematode in that field.

### **Controls on contaminated seed potatoes etc.**

5.—(1) No person may plant any seed potatoes or any plants listed in point 1 of Annex I to Directive 2007/33/EC that come from a demarcated field, or have been in contact with soil from a demarcated field, unless authorised to do so by an inspector.

(2) An authorisation under this paragraph shall be by notice in writing and shall contain such measures as the inspector thinks necessary to decontaminate those seed potatoes or plants.

### **Controls on contaminated bulbs etc.**

6.—(1) No person may plant any plants listed in point 2 of Annex I to Directive 2007/33/EC that come from a demarcated field, or have been in contact with soil from a demarcated field, unless authorised to do so by an inspector.

(2) An authorisation under this paragraph shall be by notice in writing and shall contain the measures set out in Section III(A) of Annex III to that Directive.”

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Plant Health (England) Order 2005 (S.I. 2005/2530) (“the principal Order”) to implement Council Directive 2007/33/EC on the control of potato cyst nematodes and repealing Directive 69/465/EEC (OJ No L 156, 16.6.2007, p12). Directive 2007/33/EC introduces measures to detect and control European populations of Potato Cyst Nematode.

The Schedule to this Order replaces Schedule 15 to the principal Order to implement the control measures in that Directive. Paragraph 2 provides for the demarcation of fields infested with Potato Cyst Nematode. Paragraph 3 prohibits the planting in the demarcated field of potatoes intended for the production of seed potatoes. It also controls the planting in the demarcated field of specified plants intended for replanting. Paragraph 4 prohibits the planting in the demarcated field of potatoes not intended for the production of seed potatoes unless all reasonable steps are taken to suppress Potato Cyst Nematode in that field. Paragraphs 5 and 6 impose controls on the planting of potatoes and other plants that come from a demarcated field.

Article 4 of the Order amends the powers of entry in article 31 of the principal Order to provide powers of entry to determine if plant pest is present on any premises. Article 5 replaces article 38 of the principal Order so as to include a provision regarding entry into unoccupied premises.

A transposition note and an impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food and Environment Research Agency, Plant Health Policy Team, Room 10GA07, Sand Hutton, York YO41 1LZ(a) and is annexed to the Explanatory Memorandum that is available alongside the instrument on the OPSI website.

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(a) [www.defra.gov.uk/corporate/consult/pcn/impact-assessment-pcn.pdf](http://www.defra.gov.uk/corporate/consult/pcn/impact-assessment-pcn.pdf)

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