

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (ENGLAND) (AMENDMENT) ORDER 2019
2019 No. 1070

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ('Defra') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Plant Health (England) Order 2015 (S.I. 2015 No. 610) ("the principal Order") which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It introduces national measures against *Rose rosette virus* and its vector, *P. fructiphilus*, damaging pests of roses. It also implements the specific control measures in Commission Implementing Decisions (EU) 2018/1503 and (EU) 2019/449 and Commission Implementing Directive (EU) 2019/523.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 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 EU¹ ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 and, in relation to forestry matters, by the Plant Health (Forestry) Order

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

2005 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation to the principal Order operates in Scotland, Wales and Northern Ireland.

- 6.2 *Rose rosette virus* is absent from the UK. The pest is not regulated at EU level. Measures to protect against the introduction and spread of the pest are to be implemented through this instrument and come into force on 22 July 2019.
- 6.3 A number of EU instruments have been adopted 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 introduce new measures to address risks presented by other pests and diseases. These amendments are to be implemented through this instrument and come into force on 22 July 2019, other than those relating to Commission Implementing Directive (EU) 2019/523, which come into force on 1 September 2019. The changes are described in more detail below.

7. Policy background

What is being done and why?

- 7.1 All species and cultivars of *Rosa* are considered at risk from *Rose rosette virus* (RRV) and its vector, *P. fructiphilus*, as no known tolerant or resistant species or varieties have been identified. The virus causes witches' broom, flower abortion or flower malformation, distorted leaf growth and reduction in cold hardiness, leading to mortality of roses. RRV is absent from the UK.
- 7.2 RRV is known to be present in parts of the Canada and the USA, where it has had high economic and social impacts. There is an unconfirmed report of the pest in Mexico and it has recently been reported in West Bengal, India. If the virus and its vector were to be introduced into the European and Mediterranean Plant Protection Organisation (EPPO) region, which includes the UK, the potential impacts are also likely to be high. All species and cultivars of *Rosa* would be at risk because no plant resistance has been identified.
- 7.3 Following on from a UK pest risk analysis (PRA) produced in 2016, an EPPO Expert working group (EWG) was set up in 2017 to produce an EPPO PRA for Rose rosette virus and its vector *Phyllocoptes fructiphilus*. The EWG considers RRV to be a high risk to the EPPO region. *P. fructiphilus* is considered to be a potential pest for the EPPO region, as a vector of RRV and possibly through direct feeding damage. Both RRV and *P. fructiphilus* have been added to the EPPO A1 list and are therefore recommended for regulation in EPPO countries.
- 7.4 The likelihood of establishment in the EPPO region is considered very high. If introduced, the magnitude of spread would be moderate to high, due to the extensive trade in *Rosa* and because of the aerial dispersal of *P. fructiphilus*, with a moderate uncertainty.
- 7.5 Both plants for planting and cut flowers of *Rosa* sp. are considered to be pathways for introduction of the pest. Of major concern is that the EPPO PRA assesses the risk of entry of RRV (and its vector) into the EPPO region to be high on *Rosa* plants for planting. This is the case for the UK because current measures do not significantly reduce the probability of entry. Plants of *Rosa*, intended for planting, other than dormant plants free from leaves, flowers and fruit from non-European countries are prohibited. This is, however, not effective in preventing entry, because both RRV and its vector can be associated with dormant plants. Industry is exploring new sources of

planting material and this could include areas where RRV is present. Once introduced virus spread would be rapid and eradication very difficult to achieve. Early regulation is therefore vital to help prevent the introduction of this very damaging virus and its vector.

- 7.6 Defra has written to the European Commission asking that, as RRV and its vector represents a major threat to the EU, it should be treated as a high priority for regulation by the EU. Regulation of these pests is being considered by the EU. In the meantime Defra is introducing national measures to protect against the introduction of the virus. This involves adding RRV and its vector to the list of prohibited pests and introducing a requirement that host material (*Rosa* sp, including plants for planting, cut flowers and tissue culture.) originating in countries where the pest is known to be present (Canada, India, Mexico and the USA) have been grown in an area free from the pest.
- 7.7 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 (and therefore the principal Order) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. This instrument implements the specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases.
- 7.8 These measures are contained in the following pieces of EU legislation:
- Commission Implementing Decision (EU) 2018/1503 which establishes emergency measures to prevent the introduction into and the spread within the Union of *Aromia bungii*.
 - Commission Implementing Decision (EU) 2019/449 which amends Commission Implementing Decision (EU) 2016/715 setting out measure in respect of certain fruits originating in third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.
 - Commission Implementing Directive (EU) 2019/523 which amends Annexes 1 to 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 within the Community.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This is not a consolidation. The new EU Plant Health Regulation (Regulation (EU) 2016/2031²), part of a package of revised regulations under the agri-food chain, applies in December 2019. Implementation of the EU Plant Health Regulation would require significant changes to domestic legislation.

² This Directive can be found at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519643730000&uri=CELEX:32016R2031>

10. Consultation outcome

- 10.1 The changes outlined in paragraph 7.8 reflect those already in place at the EU level, which have been published by the European Commission and have been subject to consultations with the sectors involved.
- 10.2 There is good recognition and support for the importance of keeping RRV out of the UK by stakeholder groups. The views of the main stakeholder organisations were sought on the UK pest risk analysis (PRA) produced in 2016 and have been consulted more recently through the Plant Health Advisory Forum.

11. Guidance

- 11.1 The main stakeholders likely to be affected will be informed of the transposition of the changes and a summary of the measures will be placed on the Defra website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

- 14.1 The Directive (and therefore the Order) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments.

15. Contact

- 15.1 Iain Johnstone, at the Department for Environment, Food and Rural Affairs, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@defra.gov.uk can answer any queries regarding this instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health, Bees and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, Under Secretary of State For Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.