

**2009 No. 587**

**PLANT HEALTH, ENGLAND**

**The Plant Health (England) (Amendment) Order 2009**

*Made* - - - - *10th March 2009*

*Laid before Parliament* *11th March 2009*

*Coming into force* - - *1st April 2009*

The Secretary of State, in whom the powers conferred by sections 2(1) and 3(1) of the Plant Health Act 1967<sup>(a)</sup> are now vested<sup>(b)</sup>, makes the following Order in exercise of those powers.

**Title and commencement**

1. This Order may be cited as the Plant Health (England) (Amendment) Order 2009 and comes into force on 1st April 2009.

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

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

(2) In article 2(1), for the definition of “Directive 2000/29/EC” substitute—

““Directive 2000/29/EC” means 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>(d)</sup>.

(3) In Part A of Schedule 1, in the section “Insects, mites and nematodes”—

(a) after item 11 insert “11a *Dendrolimus sibiricus* Tschetverikov”;

(b) for item 15 substitute “15 *Diabrotica virgifera zea* Krysan & Smith”; and

(c) after item 26 insert “26a *Rhynchophorus palmarum* (L.)”.

(4) In Part B of Schedule 1, in the section “Insects, mites and nematodes”, after item 1 insert “1a *Diabrotica virgifera virgifera* Le Conte”.

(5) In Part A of Schedule 2, in the section “Insects, mites and nematodes”—

(a) after item 1 insert—

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(a) 1967 c. 8; sections 2(1) and 3(1) were amended by the European Communities Act 1972 (c. 68), Schedule 4, paragraph 8.  
(b) Under the Transfer of Functions (Wales) (No.1) Order 1978 (S.I. 1978/272), article 2(1) and Schedule 1, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State; and under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, the functions transferred to the Secretary of State by the 1978 Order were transferred to the National Assembly for Wales. These functions were transferred from the National Assembly for Wales to the Welsh Ministers under section 162 of, and paragraph 30(1) and (2) of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Under article 2(1) and (2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), the remaining functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were transferred to the Secretary of State.  
(c) S.I. 2005/2530; relevant amending instruments are S.I. 2006/2307, 2007/2950 and 2008/2411.  
(d) OJ No L 169, 10.7.2000, p 1, as last amended by Commission Directive 2009/7/EC, OJ No L 40, 11.2.2009, p 12.

- “1a Plants intended for planting, other than plants in tissue culture and seeds, of *Fraxinus* L., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch., *Ulmus parvifolia* Jacq. and *Pterocarya rhoifolia* Siebold & Zucc., originating in Canada, China, Japan, Mongolia, Republic of Korea, Russia, Taiwan and USA *Agrilus planipennis* Fairmaire”;
- (b) omit item 23; and
- (c) after item 26 insert—
- “26a Tubers of *Solanum tuberosum* L. *Scrobipalopsis solanivora* Povolny”.
- (6) In Part A of Schedule 2—
- (a) in the section “Bacteria” in the second column in item 4 omit “fruit or”;
- (b) in the section “Fungi” after item 15 insert—
- “15a Plants of *Ulmus* L. and *Zelkova* L., intended for planting, other than seeds *Stegophora ulmea* (Schweinitz: Fries) Sydow & Sydow”; and
- (c) in the section “Viruses and virus-like organisms” after item 5 insert—
- “5a Plants of *Dendranthema* (DC.) Des Moul. and *Lycopersicon lycopersicum* (L.) Karsten ex Farw., intended for planting, other than seeds Chrysanthemum stem necrosis virus”.
- (7) In Part B of Schedule 2, in the section “Insects, mites and nematodes”—
- (a) after item 7 insert—
- “7a Plants of *Citrus* L., *Fortunella Swingle*, *Poncirus Raf.*, and their hybrids, other than fruit and seeds *Parasaissetia nigra* (Nietner)”; and
- (b) after item 11(a) insert—
- “12 Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera: *Brahea* Mart., *Butia* Becc., *Chamaerops* L., *Jubaea* Kunth, *Livistona* R. Br., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart., *Washingtonia* Raf. *Paysandisia archon* (Burmeister)”.
- (8) In Part A of Schedule 4—
- (a) after item 7 insert—
- “7a Plants of *Fraxinus* L., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch., *Ulmus parvifolia* Jacq. and *Pterocarya rhoifolia* Siebold & Zucc., intended for planting, other than seeds and plants in tissue culture originating in Canada, China, Japan, Mongolia, Republic of Korea, Russia, Taiwan and USA The plants shall be accompanied by an official statement that they:
- (a) have been grown throughout their life in an area free from *Agrilus planipennis* Fairmaire, established by the national plant protection organisation in accordance with ISPM No. 4; or
- (b) have, for a period of at least two years prior to export, been grown in a place of production where no signs of *Agrilus planipennis* Fairmaire have been observed during two official inspections per year carried out at appropriate times, including immediately prior to export”;

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(a) Item 11 was inserted by S.I. 2008/2411, art. 2(1), (9).

(b) in item 11, for “requirements in items 60, 61 and 64” in the right-hand column substitute “provisions applicable to the plants in item 7”;

(c) after item 35 insert—

“35a Tubers of *Solanum tuberosum* L., other than those intended for planting

Without prejudice to the provisions applicable to tubers listed in items 32 to 34, the plants shall be accompanied by an official statement that the tubers originate in areas in which *Pseudomonas solanacearum* (Smith) Smith is not known to occur.

35b Tubers of *Solanum tuberosum* L.

Without prejudice to the provisions applicable to tubers listed in items 32 to 35a, the plants shall be accompanied by an official statement that:

(a) the tubers originate in a country where *Scrobipalopsis solanivora* Povolny is not known to occur; or

(b) the tubers originate in an area free from *Scrobipalopsis solanivora* Povolny, established by the national plant protection organisation in accordance ISPM No. 4”;

(d) omit item 39;

(e) after item 43 insert—

“43a Plants of *Dendranthema* (DC.) Des Moul. and *Lycopersicon lycopersicum* (L.) Karsten ex Farw., intended for planting, other than seeds

Without prejudice to the requirements applicable to the plants listed in items 36, 37, 38, 41 to 43, the plants shall be accompanied by an official statement that:

(a) the plants have been grown throughout their life in a country free from Chrysanthemum stem necrosis virus;

(b) the plants have been grown throughout their life in an area established by the national plant protection organisation in the country of export as being free from Chrysanthemum stem necrosis virus in accordance with ISPM No. 4; or

(c) the plants have been grown throughout their life in a place of production, established as being free from Chrysanthemum stem necrosis virus and verified through official inspections and, where appropriate, testing”; and

(f) after item 57a(a) insert—

“57b Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera:

Without prejudice to the provisions applicable to the plants listed in items 57 and 57a, the plants shall be accompanied by an official statement that the plants:

*Brahea* Mart., *Butia* Becc., *Chamaerops* L., *Jubaea* Kunth, *Livistona* R. Br., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart., *Washingtonia*

(a) have been grown throughout their life in a country where *Paysandisia archon* (Burmeister) is not known to occur;

(b) have been grown throughout their life in an area free from *Paysandisia archon* (Burmeister), established by the national plant

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(a) Item 57a was inserted by S.I. 2007/2950, art. 3(3).

Raf. protection organisation in accordance with ISPM No. 4; or  
(c) have, during a period of at least two years prior to export, been grown in a place of production:  
(i) which is registered and supervised by the national plant protection organisation in the country of origin,  
(ii) where the plants were placed in a site with complete physical protection against the introduction of *Paysandisia archon* (Burmeister) or with application of appropriate preventive treatments, and  
(iii) where, during three official inspections per year carried out at appropriate times, including immediately prior to export, no signs of *Paysandisia archon* (Burmeister) have been observed”.

(9) In Part B of Schedule 4, after item 22 insert—

“22a Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera: *Brahea* Mart., *Butia* Becc., *Chamaerops* L., *Jubaea* Kunth, *Livistona* R. Br., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart., *Washingtonia* Raf.  
The plants are accompanied by an official statement that the plants:  
(a) have been grown throughout their life in an area free from *Paysandisia archon* (Burmeister), established by the national plant protection organisation in accordance with ISPM No. 4; or  
(b) have, during a period of at least two years prior to movement, been grown in a place of production:  
(i) which is registered and supervised by the responsible official body in the Member State of origin,  
(ii) where the plants were placed in a site with complete physical protection against the introduction of *Paysandisia archon* (Burmeister) or with application of appropriate preventive treatments, and  
(iii) where, during three official inspections per year carried out at appropriate times, no signs of *Paysandisia archon* (Burmeister) have been observed”.

(10) In Part A of Schedule 6, after paragraph 7(c) insert—

“(ca) Plants of Palmae, intended for planting, having a diameter of the stem at the base of over 5 cm and belonging to the following genera: *Brahea* Mart., *Butia* Becc., *Chamaerops* L., *Jubaea* Kunth, *Livistona* R. Br., *Phoenix* L., *Sabal* Adans., *Syagrus* Mart., *Trachycarpus* H. Wendl., *Trithrinax* Mart. or *Washingtonia* Raf.”.

10th March 2009

Jane Kennedy  
Minister 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 (S.I. 2005/2530) (“the principal Order”) so as to implement Commission Directive 2009/7/EC amending Annexes I, II, IV and 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 (OJ No L 40, 11.2.2009, p 12).

The Order amends Schedules 1, 2, 4 and 6 to the principal Order so as to extend controls on the introduction into, and spread within, England of certain plants and plant pests. The following harmful organisms, which are so far not known to be present in the Community, have been added to the list of prohibited organisms:

- Dendrolimus sibiricus* (Siberian coniferous silk moth),
- Rhynchophorus palmarum* (American palm weevil),
- Agilus planipennis* (Emerald ash borer) on plants of *Fraxinus*, *Juglans mandshurica*, *Ulmus davidiana*, *Ulmus parvifolia*, and *Pterocarya rhoifolia*,
- Chrysanthemum stem necrosis virus on plants of *Dendranthema* and *Lycopersicon lycopersicum*,
- Scrobipalopsis solanivora* (Guatemalan potato moth) on tubers of *Solanum tuberosum*,
- Stegophora ulmea* (Black spot of elm) on plants of *Ulmus* and *Zelkova*, intended for planting, other than seeds.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. A Transposition Note is available and can be obtained from Plant Health Division, Defra, Foss House, Kings Pool, Peasholme Green, York YO1 7PX.

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STATUTORY INSTRUMENTS

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£4.00