

EXECUTIVE NOTE TO
THE PLANT HEALTH (SCOTLAND) (AMENDMENT) (No. 2) ORDER 2008
SSI/2008/350

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967 as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

Policy Objective

2. The purpose of this Order is to amend the Plant Health (Scotland) Order 2005 (the 2005 Order) so as to implement a recent EU Decision introducing emergency measures to prevent the introduction and spread within Scotland of the plant pest *Anoplophora chinensis* (citrus longhorn beetle) (CLB). The Decision is expected to be published by the Commission by the end of November.

3. The opportunity is also taken to correct a number of errors and oversights identified by the Subordinate Legislation Committee in the Plant Health (Scotland) Amendment Order 2008 (the amending Order).

Background

4. CLB is a damaging quarantine pest of a range of trees and shrubs. Its natural range includes China, Japan and countries in South East Asia, but it is a threat to horticulture, forestry and gardens across much of the EU (including UK) as well as citrus producing regions in the Mediterranean. Although it was previously thought that CLB was unlikely to become established in the UK climate, a recent outbreak in the Netherlands and evidence of the beetle completing its full life cycle in England indicate a heightened risk in the UK. Nursery stock grown under protection is also at risk in all areas.

5. CLB is listed in the Plant Health Directive (implemented in Scotland by the 2005 Order) as a pest whose introduction or spread within the EU is banned. Susceptible plants imported into the Community require to be accompanied by a phytosanitary certificate confirming that they are free from quarantine pests. However, there have been an increasing number of interceptions in the EU this year of CLB on acers (maple trees) from China, some of which have been distributed in the UK. An outbreak has also been established in the Italian region of Lombardy. It was therefore clear that the existing controls were not adequate to prevent the introduction and spread of this pest, and the EU Standing Committee on Plant Health (SCPH) has acted to strengthen them.

Provisions

6. The Order applies to specified plant species which are known to be hosts for CLB.

7. Article 5 of the Order clarifies the scientific name for CLB. *Anoplophora chinensis* (Thomson) and *Anoplophora malasiaca* (Forster) are now considered to be a single species.

8. Article 6(1)(b) amends Schedule 4, part A of the 2005 Order to require that any specified plants entering Scotland from third countries where CLB is known to occur must be accompanied by a phytosanitary certificate bearing an additional declaration that they have been grown for two years in a registered nursery and have either been grown throughout their lives in an area free of CLB, or have been grown for at least two years in a nursery established as free of CLB. These requirements are likely to result in a de facto ban on importing acers from China for at least two years, as China does not at present have any areas or nurseries established as pest free.

9. Article 6(2)(b) applies to specified plants entering Scotland from any area of the European Community which has been demarcated under the Decision as having an outbreak of CLB. It amends Schedule 4, part B of the 2005 Order to require that any such plants must have been grown for at least two years in a registered nursery established as free from the pest.

10. Article 7 provides that specified plants originating in third countries where CLB is known to occur, or in demarcated areas within the Community, may not be landed or moved within Scotland, or consigned from Scotland to another part of the Community, unless accompanied by a plant passport.

11. Articles 3 and 4 provide that the reference to the Commission Directive 2008/61/EC inserted into article 41(7)(b) of the 2005 Order (by article 5(3) of the amending Order) is to be construed as a reference to that instrument as amended from time to time.

12. Articles 6(1)(a) and 6(2)(a) amend Schedule 4 of the 2005 Order to recognise a change in the Latin name of the Old World or African Bollworm, following Commission Directive 2008/64/EC. This change was not correctly made in the Plant Health (Scotland) Amendment Order 2008. The incorrect articles are revoked.

Timing and publicity

13. The Scottish Government is seeking to implement the Commission Decision on CLB promptly to minimise the risk of infested plants entering the UK through Scotland, as the import season for Acers from China is now in progress. The other UK administrations are taking similar action. The European Commission has notified the new requirements to the World Trade Organisation and we expect the Decision to be published by the end of November.

14. The UK Government wrote to countries where CLB is known to occur on 7 October 2008 to inform them of the proposed legislation. The Scottish Government has written to industry bodies and relevant plant traders in Scotland to inform them of the forthcoming legislation. Consignments of specified plants which arrive before the current Order comes into force will be subject to intensive inspection, including destructive sampling and destruction or rejection if there is any evidence of infestation. Once the Order comes into force, consignments will only be permitted to land without the additional declaration if the importer can prove the shipment was despatched prior to 7 October 2008. These consignments will be subject to the same intensive inspection regime.

Consultation / publicity

15. Key industry bodies were given an opportunity to comment on the draft EU proposals in May and September.

Financial impact

16. A Regulatory Impact Assessment has not been carried out for this Order as the requirements introduced by the Commission Decision are unlikely to have a significant impact on Scottish businesses.

Scottish Government
Rural Directorate
October 2008