

## POLICY NOTE

### THE PLANT HEALTH (SCOTLAND) AMENDMENT (No 2) ORDER 2012

SSI 2012/326

#### 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. The instrument is subject to negative resolution procedure.

#### Purpose of the instrument

2. This instrument amends the Plant Health (Scotland) Order 2005 ('the PH Order') which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It supplements the measures introduced by emergency GB legislation put in place by the Forestry Commission on 29 October 2012 against the fungal disease *Chalara fraxinea* (Chalara dieback of ash).

#### Policy Background and Legislation

3.1 Council Directive 2000/29/EC on protective measures against the introduction into the European Union of organisms harmful to plants or plant products and against their spread within the Union ("the Plant Health Directive") 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 pests and diseases injurious to plants and plant produce which are specified in the Annexes of the Directive. The Plant Health Directive is implemented in Scotland by the PH Order (S.I. 2005/613) and, in relation to forest materials, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517), which extends to Great Britain. Similar but separate legislation to the PH Order operates in, England, Wales and Northern Ireland.

3.2 *Chalara fraxinea* is a damaging fungal organism affecting certain species of ash, including our native ash, which is the third most common broadleaved species in Great Britain. In Scotland, Ash make up around 1% of Scotland's tree population, and Ash is one of the main species in 11,700ha of woodland (5% of broadleaved woodland and 1% of all forests and woodland in Scotland). The area of ash woodland in Great Britain is estimated to be between 119 and 154 thousand hectares. The fungus which causes the disease is currently unregulated and widespread in northern Europe. Where it is established in other European countries it has had very damaging effects, for example potential losses in Denmark are cited as between 60 and 90 percent of all ash trees.

3.3 *Chalara fraxinea* is not currently regulated by the Plant Health Directive but Article 16.2 of the Plant Health Directive provides for a Member State to take any additional measures which it deems necessary to prevent the introduction or spread of such harmful organisms in its territory, or the EU more generally.

3.3 Given the substantial threat *Chalara fraxinea* represents to the UK’s ash trees a Rapid Risk Assessment has been prepared which describes the nature and extent of that threat to ash trees intended for forestry and other purposes and possible measures to address it. Following consultation The Plant Health (Forestry) (Amendment) Order 2012 (the Forestry Order) was made on 29 October 2012 and it introduced a total ban on imports and movement of ash trees and seeds for planting in GB to protect against the threat of *Chalara fraxinea*. The competent authority in relation to those requirements is the Forestry Commissioners. This action was supported by both Scottish and UK Governments and was used for expediency and consistency to ensure a consistent approach across GB. Similar legislation was introduced in Northern Ireland.

3.4 At the time the Forestry Order was made, *Chalara fraxinea* had been intercepted in imported material and the tracing forward of consignments had identified other sites where the disease was present – these were primarily in England. Since then a nationwide survey has been completed which has revealed the presence of the disease in a number of areas of the UK, including Scotland. Further surveillance and forward tracing is continuing and the situation as of 26 November 2012 was:

	Nursery	New Planting	Wider Environment	Total
Scotland	1	13	4	19
UK (including Scotland)	17	93	127	237

3.5 While Scottish Ministers have general powers under the PH Order to take action in Scotland to deal with plant pests not normally present in GB and pose a threat, the inclusion of the measures in the PH Order will ensure that Scottish Ministers are able to continue to deal effectively with the ongoing emergency situation to supplement, in relation to non-forestry materials, the measures already in place by the Forestry Commission.

### Consolidation

4. The Plant Health Directive is currently under review by the EU. There are therefore no immediate plans to consolidate the PH Order. **However, the current amendment is focussed on dealing specifically with the need to tackle the ongoing *Chalara fraxinea* pest as a matter of urgency.**

### Consultation outcome

5. A shortened 8-week consultation was carried out by the UK Plant Health Services on a pest risk assessment prepared to evaluate the risk of *Chalara fraxinea* entering and establishing in the UK and causing damage. Three strategy options were published for consideration based on the position at the time the risk assessment was published. The consultation period was shortened to enable the Forestry

Commissioners to introduce emergency measures against *Chalara fraxinea* if appropriate before the import trade in ash began. Further details of this can viewed at:

**<http://www.fera.defra.gov.uk/plants/plantHealth/pestsDiseases/prTableNew.cfm>**

6. A press release was used to notify stakeholders about the consultation and this was picked up by the trade media for forestry, arboriculture and horticulture. The consultation closed on 26 October with a total of 68 responses (of which 12 were received after the deadline), which is high for a consultation of this kind. The majority of respondents were independent, others were associated with horticulture, tree management, Government Agencies from whole of UK.

7. There were three policy options proposed in the consultation which were conditional on the outcome of official surveillance, but all replies were in support of the policy to maintain freedom from *Chalara fraxinea*, with legislative restrictions on ash imports and movements.

### **Timing**

8. This Order is necessary now to ensure that a co-ordinated approach is taken across GB in relation to non-forestry material and to ensure the necessary controls are in place to avoid displacement from points of entry elsewhere in Europe. This supplements the emergency measures in the recent Plant Health (Forestry) (Amendment) Order 2012 which is available at: **<http://www.legislation.gov.uk/uksi/2012/2707/contents/made>**.

### **Financial Impact**

9.1 Forestry Commission (with assistance from FC Scotland, Scottish Government, The Food, Environment and Research Agency (Fera), Welsh Government) initially prepared a Cost Analysis when their emergency measures in the Plant Health (Forestry) (Amendment) Order 2012 were put forward. This estimated that the annual impact on business, charities or voluntary bodies was £250,000. This estimate was a combination of the potential loss to GB trade (£100,000) and the cost of complying with the legislation to obtain authorisation to plant passport the movement of ash plants (£100,000 inspection fees plus £50,000 administration cost to business). From initial discussion with experts in Scotland, we estimate that the potential loss to trade for the Scottish tree nursery sector due to non-movement of Ash trees is around £70,000.

9.2 A GB *Chalara* Control Plan is currently being developed and is expected to be completed by the end of November 2012. This will take account of economic and scientific evidence being generated, including through a Task Force arranged by Defra's Chief Scientist. In addition FC Scotland has commissioned an initial assessment of the potential impacts of *Chalara* on Forestry in Scotland. In view of this no Business and Regulatory Impact Assessment has been prepared for this amendment to the Plant Health Order. Both of these assessments can be made available to the RACCE Committee.

9.3 A substantial programme of monitoring has also been completed and further work is continuing and this will feed into the development of the Control Plan.

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