

Final Business and Regulatory Impact Assessment

Title of Proposal

The Plant Health (Scotland) Amendment (No.3) Order 2013.

Purpose and intended effect

• Background

Plane tree wilt and sweet chestnut blight are serious diseases which have affected trees in continental Europe. Both of these diseases are now found in France, but, with the exception of one outbreak (which is thought to have been controlled) of the latter disease in England, we believe Great Britain is thus far free of them. That means we need to prevent further outbreaks as far as we can. The greatest risk of these diseases coming to Scotland and other parts of the UK is through the import of infected planting material.

We are proposing to address this problem by strengthening existing measures under the Plant Health (Scotland) Order 2005 to protect sweet chestnut and plane trees. The new measures will require that plant material imported to Scotland comes from areas free from Plane Wilt (*Ceratocystis platani*) and Chestnut Blight (*Cryphonectria parasitica*).

This action is complementary and consistent with measures being taken by the UK Government and the cross border approach to tackling tree health.

The Report of the Tree Health and Plant Biosecurity Expert Taskforce published on 20 May 2013 recommended that biosecurity should be strengthened to reduce risks at the border and within the UK. Recommended measures include timely consideration of EU Protected Zone status to protect against new threats before they arrive, notification of the import of high-risk plants and monitoring of threats including pathways into the UK to take rapid action where necessary.

The UK Plant Health Risk Group (which co-ordinates UK assessment and management of tree and plant health threats, involving representatives from Fera, Forestry Commission and the Scottish Government), is continuing its monthly review of new and revised threats, including production of risk assessments and consultations on such assessments.

In parallel to strengthening existing measure to protect plane and sweet chestnut trees the UK Plant Health Authorities are pressing the Commission to designate the UK as a protected zone for *Ceratocystis platani* and *Cryphonectria parasitica*. However, EU measures will not be agreed and in place before the forthcoming planting season. We therefore intend to introduce national measures in advance of action by the EU by amending the Plant Health (Scotland) 2005 Order.

UK stakeholders have supported the need for stronger measures through a consultation on the initial risk assessment (which ended on 1 July 2013) and at a

Tree Health Summit held by the DEFRA Secretary of State on 11 July 2013.

Further detail on each genus are as follows:

(i) Plane

Ceratocystis platani (plane wilt) is a serious disease of plane trees both in the USA and Europe and has killed tens of thousands of plantation trees and street trees in the eastern United States, California, and southern Europe. Infected trees typically die within 3-6 years. The planting of plane in Scotland is not common, except in small numbers within urban locations. However the import into Scotland of infected material could not only threaten such trees but could also provide a transmission route to England where plane trees are a significant feature of many urban environments (particularly in the south of England).

In view of this threat, coupled with the high value of plane trees in the wider environment, strengthened requirements are needed. The intervention is intended to protect Scotland's and the UK's plane trees through minimising the risk of introducing an organism which would be potentially very damaging to such trees. The action is supported by UK stakeholders and will have little direct impact on growers and traders, as the main impact will be on suppliers in other countries. The rationale for tightening existing measures is to address 'negative externalities' - i.e. where importers, who increase the risk of disease spread, don't pay the full damage cost.

The aim of the measures is that plane material for planting, originates from places of production in countries where *Ceratocystis platani* is not known to occur or from an area free from the disease. Most compliance costs would therefore fall on exporters/suppliers in other member states, with some additional time/administration enforcement/monitoring costs

(ii) Sweet chestnut

Sweet chestnut is regulated by the Plant Health Directive, with protection against *Cryphonectria parasitica* (a harmful fungal disease). Additional requirements apply for movements into protected zones, including the UK, but these are restricted to wood and isolated bark. These requirements have proved deficient, as infected planting material from France has caused outbreaks in the UK. The planting of sweet chestnut in Scotland is not common. However the import into Scotland of infected material could not only threaten such trees but could also provide a transmission route to England where it is grown more extensively.

Sweet chestnut trees are included in the EU Plant Passporting Scheme and there are additional requirements for wood and bark being moved into and within Protected Zones. Despite having EU Protected Zone status, there have been recent findings in the UK of chestnut blight (*Cryphonectria parasitica*) on plants imported from France for sweet chestnut orchards,. Infected trees have been destroyed, with no evidence of spread in the vicinity of affected sites, although follow up work is continuing.

The aim of the measures is that sweet chestnut material for planting, [including

seeds], originates from places of production in countries where *Cryphonectria parasitica* is not known to occur or from an area free from the disease. Most compliance costs would therefore fall on exporters/suppliers in other member states, with some additional time/admin enforcement/monitoring costs.

The rationale for acting now is that the winter is the main import and planting season for trees, while they are dormant. The main interceptions of outbreaks of infected sweet chestnuts and plane trees involved trees imported over the winter period. A delay in introduction would mean that we would miss some of this crucial period.

- **Objective**

The policy objectives are to:

- (a) Improve protection for plane and sweet chestnut trees and to complement actions being taken by the UK Government;
- (b) Strengthen existing measures by requiring that material entering Scotland comes from areas free from plane tree wilt (*Ceratocystis platani*) and sweet chestnut blight (*Cryphonectria parasitica*);
- (c) Raise awareness about the threats to these species; and;
- (d) Generate evidence in support of further measures, if needed.

This approach is consistent with the EU Plant Health regime and measures being introduced by the UK Government. These issues have also been identified as priorities during development of a UK plant health risk register.

- **Rationale for Government intervention**

Government intervention is required because of the significant potential impact of these diseases on public goods, namely trees in the wider environment, in woodlands (primarily high nature conservation value woodlands in England), and trees in towns and cities.

Although plane and sweet chestnut are not widely planted in Scotland, they have a limited, but valued presence in certain locations, such as city street trees. Furthermore the measures will help prevent the movement of infected material from Scotland to England, where both trees have significant environmental and economical value.

The proposed requirement is based on evidence from a number of sources:

- Technical information about the spread of the pests and pathogens associated with these genera from European plant health networks and other Member States (which has shown the widespread presence of these diseases in countries in continental Europe which are known to export trees of these genera to the UK).
- Surveillance intelligence from this country which suggests that plane tree wilt and sweet chestnut blight are not currently present in Great Britain.

- Risk assessment undertaken under the UK Plant Health Risk Management work stream, which conducts a monthly review of top threats to tree and plant health. Work under this programme has identified these pests and pathogens as a serious threat to trees in the UK and has advised that the main risk of incursion is through the import of infected trees.

By introducing these measures we are protecting our built and natural environment for future generations.

Consultation

- **Within Government**

There has been consultation between the Scottish Government, the Forestry Commission and Defra on these proposals. The proposed Scottish measures are consistent with measures that are being introduced in England.

- **Public Consultation**

Due to the specialist nature of this regulation there has been no public consultation and as well as issuing an advisory letter these additional measures will be included on the Scottish Government Website.

- **Business**

Although there has been no specific consultation with businesses in Scotland, the actions are supported by UK stakeholder groups. However, there will be little direct impact on growers and traders in Scotland as a result of these measures an advisory letter was issued to the relevant stakeholders.

Options

1. *Do nothing*

We would continue to rely on the existing measures, while the UK Government seeks EU protected zone status for the UK (which would require additional measures to be met when moving specified material into designated areas), carry out surveillance, and keep the situation under review in light of the results. Protected zone status could not be achieved before next spring at the earliest due to the processes to be followed to introduce new EU legislation. This option is not favoured, as it means waiting for the problem to arrive before doing anything about it. It may then be too late to stop the spread of the diseases and then require expensive actions to carry out eradication. It would also be counter to the actions being taken by the UK Government. 'Do nothing' is not the favoured option.

2. Regulation to strengthen existing measures

Regulation to strengthen existing measures in the Plant Health (Scotland) Order 2005, in advance of EU measures seeking protected zone status for the whole of the UK. The aim is to protect plane and sweet chestnut trees by requiring that material entering Scotland comes from areas free from *Ceratocystis platani* and *Cryphonectria parasitica*. This is the preferred option.

• Sectors and groups affected

The level of administrative burden on importers from such an approach is small and the Scottish Government already has a notification system in place for plane and sweet chestnut imports which will be adapted for this purpose.

The industry is already familiar with the details of similar measures south of the border. For small importers (including micro-businesses), the total time taken is likely to be less than an hour per year. For larger importers, it is likely to be no more than 5-8 hours per year.

We estimate that there are around 70 businesses potentially importing plants from mainland EU directly into Scotland, but this is likely to be a high estimate as not all of them trade in the tree genera covered by this requirement.

This estimate is based on the number of registered plant passporters, and horticultural nurseries and garden centre businesses which import plants for onward sale. There may be a number of other businesses that import trees for their own end use; we have no firm numbers for these because they are not currently required to register with the Plant Health Authorities, and are not covered by a single readily identifiable trade body. The total number of businesses affected is therefore an estimate, but we believe that it represents a “worst case scenario”.

• Benefits

1. Do nothing – no benefits.
2. Regulation to strengthen existing measures.

The total value of plane and sweet chestnut trees in Scotland is difficult to establish. The data is not as well established as for trees such as pine, as the two species are not widely grown in Scotland. Although we cannot determine precisely the extent to which the tightening of existing measures will safeguard the trees, the principal benefit will be to prevent serious damage to areas where the trees are more widely grown (i.e. England).

• Costs

1. Do nothing – zero cost to business from restriction in trade and administration requirement. Potentially high costs to business and wider society from tackling new tree diseases and eradication measures.

2. Regulation. Given that plane and sweet chestnut are not widely planted in Scotland it is unlikely that the cost to importers and the nursery businesses will be significant. The effect of the measure will be to remove the option of importing plane or sweet chestnut trees from place of production where the disease is present. This will affect mostly exporters situated in those areas.

There is a risk that a reduced supply base for imported plants could lead to increased prices. Again this risk is lower in Scotland, than in England, as the number of importers and nurseries handling material is smaller.

However for comparison DEFRA have projected that over ten years the Equivalent Annual Net Cost to Business in England for sweet chestnut is around £7,000 and around £43,500 for plane.

Scottish Firms Impact Test

We have on going engagement, including round the table discussions with those businesses likely to be affected through our work with the UK Task Force. In addition to this engagement, information was shared with the Scottish Tree Health Advisory Group (STHAG). For these reasons and due to the very minor administrative impact on business we feel it would not be proportionate to carry out further face-to-face interviews with business.

- **Competition Assessment**

There are not expected to be any competition impacts. The proposal is unlikely to limit the number or range of suppliers (either directly or indirectly). Given the low level of administrative burden imposed by the proposal, it is also unlikely to limit the ability of suppliers to compete, or to reduce suppliers' incentives to compete vigorously.

- **Test run of business forms**

The procedures will be based on those already in place, adapted for these genera of trees and making use of recent experience south of the border. The system in place therefore has already been test run with businesses to ensure it is easy to use.

Legal Aid Impact Test

The Plant Health (Scotland) Amendment (No.3) Order 2013 does not introduce new criminal sanctions or civil penalties, so there are no implications for legal aid.

We have spoken to the Scottish Government Access to Justice Team who have confirmed that there will be no implications for legal aid.

Enforcement, sanctions and monitoring

Where a Scottish inspector is satisfied that material of *Castanea* (**including** seeds) and *Plantanus* not grown in Scotland but landing via Scottish ports has not be notified as required by the order and is not accompanied by certain documents confirming the place of production is in an area where the diseases are not known to occur, or have been designated by plant health authorities as disease from, then the inspector may serve a notice requiring the person introducing the plants to notify the Scottish Ministers within such period as is specified in the notice. The penalty for non-compliance with the order is destruction of said plants and/or up to a maximum fine of £5,000.

Implementation and delivery plan

It will be implemented by adapting the existing measures for notification. This will be completed by the time that the order comes into force.

Post-implementation review

Along with the other measures, there will be an annual review of these arrangements, to respond to the most up to date evidence about new and revised threats.

Summary and recommendation

The recommended option is Option 2

Introduce regulation to strengthen existing measures for Sweet Chestnut and Plane trees. This will strengthen measures to prevent entry of new tree pests and diseases into Scotland at minimal cost and that is a proportionate burden on businesses.

Summary costs and benefits table

Option	Cost	Benefit
1. Do nothing	Zero	Nil. Diseases potentially enter Scotland, and are then also transferred to England.
2. Regulation to strengthen existing measures, requiring that material entering Scotland comes from areas free from of disease.	The number of nurseries and traders in Scotland trading in these tree species is very small and the cost likely to be very low.	Measures strengthened to prevent entry of new tree pests and diseases into Scotland to avoid displacement from points of entry elsewhere in the UK from other EU countries.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:****Paul Wheelhouse, Minister for Environment and Climate Change****Scottish Government Contact point:**

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