

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (FORESTRY) (AMENDMENT) ORDER 2009

2009 No. 594

1. This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Plant Health (Forestry) Order 2005 ('the principal Order') which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It introduces emergency measures against *Anoplophora chinensis* (Citrus Longhorn Beetle) and amends the emergency measures against the further introduction of *Thaumetopoea processionea* (Oak Processionary Moth).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ("the Plant Health Directive") establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in Great Britain, for forestry matters, by the principal Order. Similar but separate legislation operates for non-forestry matters in England, Scotland, Wales and Northern Ireland.

4.2 Under the Plant Health Directive the introduction and spread within the EU of Citrus Longhorn Beetle is prohibited but no measures were specified in respect of plant material susceptible to it. The European Commission has adopted Commission Decision 2008/840/EC which now prescribes such measures. The current Order amends the principal Order to implement these new controls.

4.3 The Plant Health Directive has been further amended by Commission Directive 2009/7/EC to introduce, as regards forestry, measures to prevent the introduction and spread of *Agrilus planipennis* (the Emerald Ash Borer) and to add *Dendrolimus sibiricus* (the Siberian Conifer Silk Moth) to the list of prohibited pests. There are also changes to reflect amendments to the Customs Nomenclature codes for certain wood products.

4.4 The import requirements in the Plant Health Directive, concerning wood packaging material entering the EU from third countries other than Switzerland, have also been amended so as to require, from 1 July 2009, that such material is produced from wood which is free from bark (with specified tolerances). This is set out in Commission Directive 2008/109/EC. The Order is therefore being amended to reflect this change.

4.5 The Forestry Commission is also amending pre-existing temporary emergency measures to prevent the introduction into Great Britain of *Thaumetopoea processionea*

(the Oak Processionary Moth) so as to permit the entry of oak trees of not more than 2 metres in height which have been grown in nurseries and which have been inspected and found free of any symptoms of Oak Processionary Moth. These measures are permitted under Article 16 of the Plant Health Directive.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Citrus Longhorn Beetle is a damaging quarantine pest of a range of trees and shrubs. The common name is misleading because this pest can be found on many different species of trees, and outbreaks in northern Italy, and of the related Asian Longhorn Beetle (*Anoplophora glabripennis*) in the USA, have shown the potential of these pests to move with international trade and cause damage. The natural range of the beetle includes China, Japan and other countries in South East Asia. They are a threat to horticulture, forestry and woodland trees in Great Britain and also to citrus production in the Mediterranean. The South East of England is most at risk, given its climate, area of woodland and quantity of hardy nursery stock traded. Should an outbreak occur, it is estimated that the costs of eradication would range between £21m (for a low impact outbreak, involving 2,500 trees) to £325m (for a high impact outbreak, involving 5% of the value of the trees in London). On this basis, there is a strong cost benefit justification for continuing to exclude Citrus Longhorn Beetle.

7.2 Emerald Ash Borer is known cause serious damage, principally to Ash trees, but also to some species of Elm, Walnut, and Japanese Wing Nut. It was introduced into the USA some years ago from the far-east and was reported as widespread in Moscow in 2007. Ash is native to Britain and is an important component of the landscape and is also common in towns, parks and churchyards. There are about 119,000 hectares of Ash in our woodlands. It is difficult to estimate the potential cost if this pest were to become established in this country, but it would certainly run into some millions of pounds and may be higher than the estimated costs of an outbreak of Citrus Longhorn Beetle as Ash trees throughout Great Britain are at risk and the impact on our landscape, towns and cities would be severe.

7.3 The Plant Health Directive would otherwise have required, from 1 January 2009, that wood packaging material should be manufactured from debarked wood. This would have permitted larger pieces of bark to remain, which would have increased the risk of transmission of pests. Following international collaboration and research into the risk associated with bark on wood, it has been shown that the level of risk is minimised if the size of individual pieces of bark is no more than 50 square centimetres or if individual

strips of bark, for example on the edges of boards, is no more than 3 centimetres in width, regardless of their length.

7.4 Following the appearance of Oak Processionary Moth in 2006, and surveys in 2007, the Forestry Commission notified the Commission and the Member States of our findings and subsequently, following the preparation of a Pest Risk Assessment, we advised them that we considered additional measures were necessary. The European Commission had indicated that it is prepared to formulate proposals but that this may take some time. The Forestry Commission therefore put in place temporary emergency measures in March 2008 by way of the Plant Health (Forestry) (Amendment) Order 2008. This requires that all oak trees originating in another Member State and which are to be introduced into Great Britain must be accompanied by a plant passport confirming that the trees have been grown in a nursery where both it and the immediate vicinity have been inspected and found free of symptoms of Oak Processionary Moth since the beginning of the last complete cycle of vegetation. We have reviewed these measures and are now satisfied that trees of less than 2 metres in height are not susceptible to attack by the moth and we are therefore modifying our measures to enable oak trees under 2 metres in height to be imported. We have informally consulted with the industry and they have welcomed this change.

- ***Consolidation***

7.5 There are no immediate plans to consolidate the Plant Health (Forestry) Order 2005 but an informal consolidation will be made available, free, on the Forestry Commission website at www.forestry.gov.uk/planthealth.

8. Consultation outcome

8.1 A formal consultation on these changes was not considered necessary on this occasion as the main burden of compliance is on the producer or exporter in the country from which the regulated plants and plant products are to be shipped .

9. Guidance

9.1 The Forestry Commission publishes guidance for those affected by its legislation on its website and also provides advice for importers and other interested parties by way of newsletters. These are available, free, at www.forestry.gov.uk/planthealth

10. Impact

10.1 The Order will have minimum impact on business, and no impact on charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business, but will have minimal impact.

11.2 Ensuring compliance with the landing requirements applying to the importation of regulated plants and plant products falls primarily to the consignor in the country of

export. This is attested, usually, by the issue of a phytosanitary certificate issued by the official Plant Protection Organisation in the country concerned and which is presented for inspection, together with the consignment, when it arrives in Great Britain. As the risk of introduction of pests is associated with the consignment, and is not mitigated by the size of the business which is importing it, it is not appropriate, or possible within the limitations of the Plant Health Directive, to make special provisions for small businesses. There are, however, provisions for reducing the frequency of inspections of specified plant products, including wood, based on a minimum level of trade over a three-year period where there is evidence to show that the level of compliance has been high.

12. Monitoring & review

12.1 The Forestry Commission will maintain records of imports of the newly regulated wood products, and the outcome of its inspections to check for compliance. If there is sufficient evidence to demonstrate that the qualifying criteria for reducing the frequency of inspections, and thus the associated costs, can be met for any particular commodity, this will be presented to the European Commission. The minimum qualifying period is three years as prescribed in Commission Regulation (EC) No. 1756/2004.

13. Contact

Roddie Burgess (Plant Health Service, Forestry Commission, 231 Corstorphine Road, Edinburgh EH12 7AT. Tel 0131 314 6401, e-mail roddie.burgess@forestry.gsi.gov.uk) can answer any queries regarding the instrument.

TRANSPOSITION NOTE**Directive 2009/7**

Dir. 2009/7, Annex provision	Amendment Order, article provision
1(a)(i)	2(3)(b)
1(a)(ii), (iii)	Not transposed here (non-forestry)
1(b)	Not transposed here (non-forestry)
2(a)(i)	2(4)(a)
2(a)(ii), (iii)	Not transposed here (non-forestry)
2(b)	2(4)(b)
2(c), (d)	Not transposed here (non-forestry)
3(a)	2(5)(b), (c), (d)
3(b)	2(5)(f)
3(c)	Not transposed here (amendment not needed)
3(d), (e), (f), (g), 4 and 5(a)	Not transposed here (non-forestry)
5(b)	2(7)
5(c)	Not transposed here (amendment not needed)

Directive 2008/109

Dir. 2008/109, Annex provision	Amendment Order, article provision
1	2(5)(a)
2	2(5)(e)

Decision 2008/840

Dir. 2008/840, provision	Amendment Order, article provision
Article 2	2(3)(a)
Annex Part I	2(5)(g), 2(8)
Annex Part II	2(6)(c), 2(8)