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STATUTORY INSTRUMENTS

2012 No. 2922

PLANT HEALTH, ENGLAND

The Plant Health (England) (Amendment) Order 2012

<i>Made</i>	- - - -	<i>21st November 2012</i>
		<i>22nd November</i>
<i>Laid before Parliament</i>		<i>2012</i>
<i>Coming into force</i>	- -	<i>14th December 2012</i>

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

Title and commencement

- 1.—(1) This Order may be cited as the Plant Health (England) (Amendment) Order 2012.
- (2) This Order comes into force on 14th December 2012.

Amendment of the Plant Health (England) Order 2005

- 2.—(1) The Plant Health (England) Order 2005(3) is amended as follows.
- (2) In article 2(1) (general interpretation), for the definition of “ISPMNo. 4”, substitute—
““ISPM No. 4” means International Standard for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(4);”.
- (3) In article 8(2) (exceptions from certain prohibitions and requirements)—

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- (1) 1967 c. 8. Sections 2(1) and 3(1) were amended by the European Communities Act 1972 (c. 68), Schedule 4, paragraph 8. The powers conferred by sections 2 and 3 are conferred on a “competent authority”, which is defined in section 1(2), as regards the protection of forest trees and timber from attack by pests, as the Forestry Commissioners and otherwise, for England, as the Secretary of State.
 - (2) The functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 (c. 8) were, so far as exercisable in relation to Wales, transferred to the Secretary of State by article 2 of, and Schedule 1 to, the Transfer of Functions (Wales) Order (No. 1) Order 1978 (S.I. 1978/272). Those functions were transferred from the Secretary of State to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The remaining functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by article 2(2) of the Ministry of Agriculture, Food and Fisheries (Dissolution) Order 2002 (S.I. 2002/794).
 - (3) S.I. 2005/2530, as amended by S.I. 2006/2307, 2007/1893, 2950, 3133, 2008/2411, 2765, 2009/587, 2010/1510, 2962 and 2012/697.
 - (4) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

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- (a) in sub-paragraph (a)(iii), after “potatoes” insert “or seeds of *Fraxinus* L.”; and
 - (b) in sub-paragraph (b)(ii), after “sub-paragraph (i)” insert “or plants of *Fraxinus* L. intended for planting”.
- (4) In article 22(1) (exceptions from certain prohibitions and requirements), after “small quantities of any relevant material”, insert “other than plants of *Fraxinus* L. intended for planting”.
- (5) For article 40 (licences to carry out prohibited activities), substitute—

“Licences to carry out activities prohibited by this Order

40.—(1) Notwithstanding any of the provisions of this Order, any plant pest or relevant material may be landed, kept, stored, sold, planted, moved or otherwise disposed of in England and any other thing prohibited by this Order may be done under the authority of a licence granted by the Secretary of State—

- (a) in exercise of any derogation permitted by Directive [2000/29/EC](#)(5); or
- (b) for trial or scientific purposes, or for work on varietal selections, in relation to a domestic quarantine plant pest.

(2) A licence granted under paragraph (1)(b) must be in writing and may be granted—

- (a) subject to conditions;
- (b) for an indefinite period or a specified period.

(3) In this article, “domestic quarantine plant pest” means a plant pest which is not listed in Annex I or Annex II to Directive [2000/29/EC](#) and which is not normally present in, and is likely to be injurious to plants in, Great Britain.”.

(6) In the heading of article 41 (licences for trial or scientific purposes and for work on varietal selections), after “varietal selections”, insert “permitted by Directive [2008/61/EC](#)(6)”.

(7) In Part B (plant pests known to occur in the European Union which may not be landed or spread within England) of Schedule 1(7), for the items under the heading “Fungi”, substitute—

“1	<i>Chalara fraxinea</i> T. Kowalski, including its teleomorph <i>Hymenoscyphus pseudoalbidus</i>
2	<i>Melampsora medusae</i> Thümen
3	<i>Synchytrium endobioticum</i> (Schilbersky) Percival”.

(8) In Part B (relevant material which may not be landed in or moved within England if that material is carrying or infected with plant pests known to occur in the European Union) of Schedule 2(8), after item 1 under the heading “Fungi”, insert—

“1a	Plants of <i>Fraxinus</i> L. intended for planting.	<i>Chalara fraxinea</i> T. Kowalski, including its teleomorph <i>Hymenoscyphus pseudoalbidus</i> ”.
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(9) In Part A (relevant material, from third countries, which may only be landed in England if special requirements are satisfied) of Schedule 4—

(5) OJ No L 169, 10.7.2000, p 1.

(6) OJ No L 158, 18.6.2008, p 41.

(7) Part B of Schedule 1 was amended by [S.I. 2011/1043](#), article 4(1); there are other amendments, but none is relevant.

(8) Part B of Schedule 2 was amended by [S.I. 2011/1043](#), article 4(1); there are other amendments, but none is relevant.

- (a) in the third column of item 7a of the table(9), for “The plants shall be accompanied by an official statement” substitute “Without prejudice to the requirements in item 7b, the plants shall be accompanied by an official statement”; and
- (b) after item 7a, insert—

“7b	Plants of <i>Fraxinus</i> L. intended for planting, which originate in a third country	Without prejudice to the requirements in item 7a, the plants shall be accompanied by a phytosanitary certificate which has been issued by the national plant protection organisation of the country from which the plants originate and which includes under the heading “Additional Declaration” an official statement that the plants have been grown throughout their life in an area which has been established and is maintained as an area free from <i>Chalara fraxinea</i> T. Kowalski (including its teleomorph <i>Hymenoscyphus pseudoalbidus</i>) in accordance with ISPM No. 4”.
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(10) In Part B (relevant material, from another part of the European Union, which may only be landed in or moved within England if special requirements are satisfied) of Schedule 4, after item 37 of the table(10), insert—

“38	Plants of <i>Fraxinus</i> L. intended for planting	The plants shall be accompanied by an official statement that they have been grown throughout their life in an area which has been established and is maintained as an area free from <i>Chalara fraxinea</i> T. Kowalski (including its teleomorph <i>Hymenoscyphus pseudoalbidus</i>) in accordance with ISPM No. 4”.
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(11) In Part A (relevant material from a third country which may only be landed in England if accompanied by a phytosanitary certificate) of Schedule 5(11)—

- (a) in sub-paragraph (c) of item 1, for “or *Phaseolus* L.” substitute “, *Phaseolus* L. or *Fraxinus* L.”; and
- (b) in sub-paragraph (a) of item 2, after “*Dianthus* L.,” insert “*Fraxinus* L.”.

(12) In Part A (relevant material, from England or elsewhere in the European Union, which may only be landed in or moved within England if accompanied by a plant passport) of Schedule 6, after item 8(12), insert—

“9. Plants of *Fraxinus* L. intended for planting.”.

(9) Item 7a was inserted by S.I. 2009/587, article 2(1) and (8)(a). There are other amendments to Part A of Schedule 4, but none is relevant.

(10) Item 37 was inserted by S.I. 2008/2765, article 2(1) and (4). Part B of Schedule 4 was amended by S.I. 2011/1043, article 4(1); there are other amendments to that Part, but none is relevant.

(11) There are amendments to Schedule 5, but none is relevant.

(12) Item 8 was inserted by S.I. 2008/2765, article 2(1) and (5). Schedule 6 was amended by S.I. 2011/1043, article 4(1); there are other amendments, but none is relevant.

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(13) In Part A (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport) of Schedule 7, after item 8(13), insert—

“9. Plants of *Fraxinus* L. intended for planting.”.

de Mauley
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

Date 21st November 2012

(13) Item 8 was inserted by [S.I. 2008/2765](#), article 2(1) and (5). Schedule 7 was amended by [S.I. 2011/1043](#), article 4(1); there are other amendments, but none is relevant.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (England) Order 2005 (S.I. 2005/2530) to include measures to prevent the introduction and spread of *Chalara fraxinea* T. Kowalski, including its teleomorph *Hymenoscyphus pseudoalbidus*, a cause of ash dieback. In particular, the Order:

- (a) prohibits the landing in or the spread within England of *Chalara fraxinea* T. Kowalski (article 2(7));
- (b) prohibits the landing in or the movement within England of plants of *Fraxinus* L. intended for planting, which are infected with *Chalara fraxinea* T. Kowalski (article 2(8));
- (c) imposes additional requirements on the landing in or movement within England of plants of *Fraxinus* L. intended for planting (article 2(9) to (12)); and
- (d) imposes additional requirements on the consignment from England to other parts of the European Union of plants of *Fraxinus* L. intended for planting (article 2(13)).

Emergency measures to prevent the introduction and spread of *Chalara fraxinea* T. Kowalski were introduced by the Plant Health (Forestry) (Amendment) Order 2012 (S.I. 2012/2707). The competent authority for those measures is the Forestry Commissioners. This Order enables the Secretary of State to act as competent authority for England in relation to certain specific measures to prevent the introduction and spread of *Chalara fraxinea* T. Kowalski.

The Order also confers powers on the Secretary of State to grant licences for trial or scientific purposes or for work on varietal selections in relation to certain plant pests (article 2(5)).

An impact assessment has not been produced for this instrument as no further impact on business or the private or voluntary sector is foreseen. The Explanatory Memorandum for this instrument is available alongside the instrument at www.legislation.gov.uk.

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