

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (ENGLAND) (AMENDMENT) ORDER 2012

2012 No. 2922

1. This explanatory memorandum has been prepared by the Food and Environment Research Agency (FERA), an executive agency of the Department for Environment, Food and Rural Affairs, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Plant Health (England) Order 2005 ('the PH Order') which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It introduces measures against the fungal disease *Chalara fraxinea* (Chalara dieback of ash). It also amends existing licensing arrangements to permit trials and scientific work on domestic quarantine plant pests.

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

3.1 None.

4. Legislative Context

4.1 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 products which are specified in the Annexes of the Directive. The Plant Health Directive is implemented in England by the PH Order (S.I. 2005/2530) and 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 Scotland, Wales and Northern Ireland.

4.2 *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. This instrument amends the PH Order to include domestic measures to prevent the introduction into or spread within England of *Chalara fraxinea*.

4.3 Commission Directive 2008/61/EC establishes the conditions under which certain harmful organisms and material listed in the Plant Health Directive can be brought into the EU and moved within it. These conditions safeguard the use of this material for trial

or scientific purposes and for work on varietal selections. The licensing regime facilitates work by universities, research institutes and other organisations undertaking work on the risks from and control of harmful organisms. This instrument extends existing licensing powers in article 40 of the PH Order to provide for the granting of licences so that scientific research and work can be carried out on certain harmful plant pests that are regulated only by domestic measures.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 *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. 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 not regulated by the Plant Health Directive. It is widespread in northern Europe but known not to be widely established in Great Britain. 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. *Chalara fraxinea* represents a substantial threat to the UK's ash trees. A 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. The Plant Health (Forestry) (Amendment) Order 2012 was made on 29 October 2012 with requirements to protect against the threat of *Chalara fraxinea*. The competent authority in relation to those requirements is the Forestry Commissioners. This instrument amends the PH Order to enable the Secretary of State to act as competent authority for England in relation to certain specific provisions to prevent the introduction and spread of *Chalara fraxinea*.

7.2 Commission Directive 2008/61/EC establishes the conditions under which certain harmful organisms and material listed in the Plant Health Directive can be brought into the EU and moved within it. These conditions safeguard the use of this material for trial or scientific purposes and for work on varietal selections. The PH Order does not currently allow licences to be granted to allow for trials or scientific research or for work on varietal selections in relation to harmful organisms not listed in the Plant Health Directive. There is a significant number of pests, like *Chalara fraxinea*, which are not listed in the Plant Health Directive but which are harmful to plants and not present in Great Britain. We need to carry out scientific research into these organisms under

controlled conditions in order to better understand both the threat that they represent and the means by which we can mitigate this threat.

- Consolidation

7.3 The Plant Health Directive is currently under review by the European Commission. There are therefore no immediate plans to consolidate the PH Order.

8. Consultation outcome

8.1 A shortened 8-week consultation was carried out 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. The consultation was hosted on the FERA website linked to the Forestry Commission website. 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 and NGOs.

8.2 There were three policy options proposed in the consultation which were conditional on the outcome of official surveillance:

- if the disease was not found to be widely established then maintain Great Britain free of *Chalara fraxinea* through an eradication strategy, supported by legal restrictions on ash imports and movements;
- if established with limited distribution then a suppression strategy was proposed without the burden of legal restrictions on ash imports and movements;
- in the event of widespread distribution no official measures would be taken.

All replies were in support of the policy to maintain freedom from *Chalara fraxinea*, with legislative restrictions on ash imports and movements. However, 26% of responses agreed with both the suppression and eradication options depending on whether the pest was already established and some of the main trade associations and individual businesses expressed concern about the impact on industry in Great Britain. None of the respondents wanted to abandon official measures.

The results of the consultation will be summarised on the websites of FERA and the Forestry Commission.

9. Guidance

9.1 The Forestry Commission has part of its website devoted to *Chalara fraxinea* which contains information about the disease and questions and answers about the emergency measures in relation to *Chalara fraxinea*. FERA and the Forestry Commission have contacted businesses already registered with them for the trade in plants and seed, as well as other businesses which are not yet registered because they do not currently produce or trade in passportable species. Information on passporting of other species is already published and available.

10. Impact

10.1 Further work is in progress, in response to the effects of the Plant Health (Forestry) (Amendment) Order 2012 on the Government and industry, to better understand the economic and environmental impacts and an impact assessment is being completed by the Forestry Commission. While the details are likely to change in response to developments, the annual impact on business, charities or voluntary bodies has been estimated by the Forestry Commission to be £250,000. This estimate was a combination of the value of the potential loss to trade (£100,000) and the cost of complying with the legislation to obtain authorisation to passport the movement of ash plants (£100,000 inspection fees plus £50,000 administration cost to business). Such authorisations are usually a chargeable activity. The recovery of additional plant passporting costs will depend on whether a charging mechanism is available and these may need to be met from the public sector surveillance budget until such a time that *Chalara fraxinea* is listed as an EU quarantine pest.

10.2 The impact on the public sector is the cost to establish whether Great Britain can justify itself to be free from *Chalara fraxinea* and was estimated at £40,000 per year. This does not include the cost of surveillance for investigation and disease response by the public sector. However, the cost of plant passport authorisation of approximately £100,000 per year may fall to the public sector until such time that *Chalara fraxinea* is listed as an EU quarantine pest. No further impact on business or the private or voluntary sector is foreseen by this instrument.

10.3 A rapid pest risk assessment was prepared for *Chalara fraxinea* and this has been subject to scrutiny through a public consultation exercise, published on the Fera website. This assessment will be updated to take account of new information about the disease distribution. At the time of the consultation the disease had not been known to be present in the wider environment, but has now been confirmed in East Anglia and elsewhere, principally in the east of the country, but with scattered findings in other areas. The Forestry Commission is publishing regular updates on the number of findings. There are no negative impacts associated with the amendments to the PH Order to permit licensing of domestic quarantine tree pests.

11. Regulating small business

11.1 The legislation applies to small business.

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 England. 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 the consignment, it is not appropriate, or possible within the limitations of the Plant Health Directive, to make special provisions for small businesses.

12. Monitoring & review

12.1 A substantial programme of monitoring has been completed and further work is continuing and this is being used by policy teams to develop a strategy for dealing with *Chalara fraxinea*. FERA will continue to trace forward consignments of plants which are confirmed as infected with *Chalara fraxinea* (i.e. use industry documentation to follow up related batches of plants) in order to determine the extent of outbreaks in non-forestry situations including the nursery trade. It will also maintain records of the businesses which are newly authorised to passport the movement of ash and the outcome of its inspections to check for compliance. The Forestry Commission also continue to trace forward consignments of plants which are confirmed as infected with *Chalara fraxinea* to determine the extent of outbreaks in forestry situations. The Forestry Commission will also survey the condition of ash woodland at a national level and publish these findings. It will also maintain its records of ash trees imported for forestry purposes from other Member States.

12.2 A control strategy is being developed in association with stakeholders, taking account of economic and scientific evidence being generated, including through a Task Force arranged by Defra's Chief Scientist. The Secretary of State arranged a stakeholder summit on 7 November 2012 and a short term action plan was published on 9 November 2012. The first review of the strategy will take place by the European Commission in late November 2012 when FERA reports progress at a meeting of the EU Standing Committee on Plant Health. The next stage of review is due in early 2013 when we will consider the evidence to make a case for a pest-free area in order to permit movement of ash plants within parts of Great Britain. There will also be consideration by the European Commission of whether EU requirements on *Chalara fraxinea* should be introduced, which would be based on recognising protected zones (a similar concept to pest-free areas). If this has not happened by the time that pest-free areas are established in Great Britain then a case would be made to request that *Chalara fraxinea* is listed as an EU quarantine tree pest and for the UK (or parts of it) to be recognised as a protected zone. Once protected zone status is granted there will be no further requirement for national emergency legislation relating to the movement of ash trees for planting, as these

measures would be incorporated in EU legislation. Protected zone requirements are subject to annual review by the European Commission.

13. Contact

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