

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (ENGLAND) (AMENDMENT) (No.2) ORDER 2010
2010 No. 2962

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

This Order amends the Plant Health (England) Order 2005 (S.I. 2005/2530) ('the principal Order') which contains measures to prevent the introduction and spread of harmful plant pests and diseases, which implements Commission Directive 2000/29/EC. This Order SI amends the principal Order as follows:

Relevant provisions of Commission Decision 2010/380/EU amending Commission Decision 2008/840/EC are transposed in Article 2(4) and (5)(b) (see Transposition Table attached in the Annex to this memorandum).

Article 2(2) provides for the references to Commission Decision 2008/840/EC in the principal Order to be read as amended from time to time. Article 2(3) amends the entry for countries of origin contained in item 10 of Schedule 3 to the principal Order. Article 2(5)(a) amends the description of relevant material contained in item 52 of Part A of Schedule 4 to the principal Order.

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

None.

4. Legislative Background

- 4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU ("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 serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2005 (Statutory Instrument 2005 No. 2530). Similar but separate legislation operates in Scotland, Wales and Northern Ireland.
- 4.2 A number of EU instruments have been adopted amending the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introducing new measures to address risks presented by other pests and diseases. These amendments are

described in more detail below and this Order makes the necessary amendments to the principal Order.

- 4.3 This Order is made under sections 2 and 3 of the Plant Health Act 1967, which enable the Secretary of State to make Orders for the purposes of preventing the introduction of plant pests into England and to prevent their spread, and paragraph 1A of Schedule 2 to the European Communities Act 1972.

5. Extent

This instrument applies to England only.

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

- 7.1 *Anoplophora chinensis*: *A. chinensis* (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 *Anoplophora glabripennis* (Asian longhorn beetle) 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 the UK 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 £21 million (for a low impact outbreak, involving 2,500 trees) to £325 million (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 In response to a number of findings of citrus longhorn beetle in the UK and elsewhere (particularly The Netherlands and Germany) in 2008, emergency measures were implemented by the Standing Committee on Plant Health. Commission Decision 2008/840/EC was adopted by the Commission in November 2008, introducing emergency measures and implemented by the Plant Health (England) (Amendment) (No. 2) Order 2008 (S.I.2008 No. 2765). These included restrictions on the import of a wide range of plants from countries where the beetle is known to be present, requirements for plants to have been grown in a pest free area and monitored for at least two years.
- 7.3 Commission Decision 2010/380/EU amends previous requirements for the import and movement of susceptible plants introduced in Commission Decision 2008/840/EC to prevent the introduction into and spread within the Community of *A. chinensis*. Amendments introduced by the Decision include a tightening of existing pre-export and import requirements for host material originating from

third countries and the introduction of a ban on the import of plants of the genus *Acer* (a particular host for *A. chinensis*) from China until 30th April 2012. This latter provision was introduced following continued interceptions of *A. chinensis* on Acers from China, despite the introduction of Decision 2008/840/EC. An ambulatory reference is being introduced to give effect to this and future EU amending Decisions on this particular pest. It is necessary and expedient to introduce such a reference, as Decision 2008/840/EC is updated regularly with the need for efficient and timely implementation, to ensure effective action against the pest. At the EU Standing Committee on plant health meeting in October 2010, for example, the Commission presented initial forestry working group proposals on *A. chinensis*. Based on these proposals and subsequent discussions at the Standing Committee meeting, the Commission are currently drafting proposals for amendments to Decision 2008/840/EC. This is likely to result in a further amending Decision early in 2011. Regular reviews are required to take account of scientific and technical developments (e.g. whether the list of host plants specified remains current) and to evaluate the effectiveness of the controls described to consider if any changes are needed (as in the case of Decision 2010/380/EU). At least annual reviews are likely to take place for the foreseeable future.

7.4 The measures introduced through this Order are intended to prevent the introduction and spread of plant pests and diseases. Failure to enforce the measures would place the UK and the wider EU at risk from the relevant pests and diseases and could also lead to an EU infraction risk.

7.5 The Order also makes minor changes to the requirements for the import of soil from third countries; at item 10 of Schedule 3 to clarify the type of material which may be imported and at item 52 of Schedule 4 the countries from which soil is prohibited. These changes mirror similar changes made in 2009 to the Plant Health (Forestry) Order 2005 (Statutory Instrument 2005 No. 2517).

7.6 There are plans to consolidate the Plant Health (England) Order 2005 in 2011, which will include the changes introduced through Decision 2008/840/EC.

8. Consultation outcome

8.1 The Order introduces technical changes to existing legislation with the majority of costs falling on producers in exporting countries, in terms of compliance with the specified pre-export requirements. As there is no impact on the costs for businesses and only technical revisions to an existing regime are being introduced a consultation has not been carried out.

9. Guidance

9.1 The Order introduces technical changes to existing legislation only. These changes have been publicised but additional guidance is not necessary.

10. Impact

A regulatory impact assessment has not been prepared as the Order has no impact on the costs for business.

11. Regulating small business

11.1 The legislation has no impact on the costs for business.

12. Monitoring & review

12.1 The Order introduces technical changes to existing legislation. Monitoring of compliance with the specified pre-export requirements will be implemented as part of existing inspections by Fera's Plant Health and Seeds Inspectorate. There will be an annual review of the EU legislation being implemented.

13. Contact

For further information please contact one of the individuals listed below:

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TRANSPOSITION TABLE

The Plant Health (England) (Amendment) (No. 2) Order 2010

This Order transposes as set out below the following Community instrument:

Commission Decision 2010/380/EU (*Anoplophora chinensis*).

Provision in Commission Decision	Purpose	Transposition (provision in the Plant Health (England) (Amendment) (No. 2) Order 2010)
Article 1(1)	Ban on introduction of <i>Acer</i> spp. from China until 30 April 2012	Article 2(4)
Article 1(1) and (2)	Requirements for import of specified plants from China and from third countries where <i>Anoplophora chinensis</i> is known to occur, other than China	Article 2(5)(b)