

**EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (ENGLAND) (AMENDMENT) ORDER 2013**

2013 No. 23

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the Instrument**

- 2.1 This Order amends the Plant Health (England) Order 2005 (S.I. 2005 No. 2530) (“the PH Order”), which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It introduces a statutory notification scheme for imports of specified genera of trees – *Platanus* (Plane), *Quercus* (Oak), *Castanea* (Sweet chestnut) and *Fraxinus* (Ash) - to strengthen measures already in place in relation to imports of trees.

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

- 3.1 These tree species are regulated under the EU Plant Health Regime or in GB domestic legislation, but have been associated with outbreaks of harmful organisms in the UK or elsewhere. Statutory notification of imports will provide a mechanism to monitor such imports more effectively, to identify potential issues at an early stage and to follow up problems. For reasons of operational urgency, this order comes into force on 16 January 2013 in breach of the rule requiring instruments to be laid at least 21 days before they come into effect. Winter is the main period for trading and planting trees, while they are dormant, and a delay of 21 days would mean that additional imports would be received which had not been notified. This would increase the risk of infected trees being received, which could be circulated undetected. The first UK interception of ash trees infected with *Chalara fraxinea* and the outbreaks of sweet chestnuts infected with *Cryphonectria parasitica* involved trees imported over the winter period. Comprehensive notification data allows surveillance resources to be targeted in the most timely and effective manner and facilitates tracing in the event of problems being detected.

4. **Legislative Context**

- 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 EU¹ (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in England by the PH

¹ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

Order 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 Existing measures in the PH Order provide for the control of many harmful organisms affecting tree genera. However, the interim report of the Tree Health and Plant Biosecurity Expert Taskforce² has recommended that these measures need to be strengthened in order to safeguard England from tree health threats. This Instrument amends the PH Order to include measures aimed at addressing this risk.

5. Territorial Extent and Application

- 5.1 This instrument applies to England only. Initially the arrangements will be introduced in England only, where the vast majority of imports take place, but the Devolved Administrations are considering their positions.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The Interim Report of the Tree Health and Plant Biosecurity Expert Taskforce has 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. Actions to supplement existing work in this area will be considered in the context of the recommendations made by the Task Force and any further ones included in their final report, due in spring 2013.

- 7.2 In the meantime, the process of regular (monthly) review of new and revised plant health threats is continuing and has concluded that, taking account of the interim recommendations of the Task Force, a statutory notification system for imports of certain tree genera will help to address specific risks identified in relation to these genera, by strengthening the statutory requirements which are already in place for them. The genera concerned are:

(i) Plane

Plane trees are included in the EU Plant Passporting scheme. There are also EU requirements on the movement of plane wood. This is in response to the risk from plane wilt caused by *Ceratocystis platani* which has had a major impact in

² The report can be found at <http://www.defra.gov.uk/publications/files/pb13842-tree-taskforce-interim-121206.pdf>

France's Canal du Midi, with 42,000 trees needing to be felled. It causes severe wilting and tree mortality and is also present in Italy and Switzerland. The main pathway for movement is infected plants for planting. There have been no cases in the UK, but it would be very damaging if introduced. This is because plane trees are commonly planted in urban situations in the UK, due to their reputation for tolerance to water shortage and high levels of pollution. Other unregulated organisms affecting plane trees are known to be present elsewhere, which could be damaging if introduced to the UK.

(ii) Oak

Oak trees are included in the EU Plant Passporting Scheme. UK measures are also in place in connection with the risk from oak processionary moth, which is present in many EU countries. There have been a number of outbreaks of this pest linked to imported plants, with the main pathway being undetected egg masses moved on dormant plants. The pest is now established in some London boroughs, but EU Protected Zone status is being sought for the remainder of the UK.

(iii) Chestnut

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

(iv) Ash

Ash trees are not regulated under the EU Plant Health Directive, but UK measures are in place against *Chalara fraxinea*. These restrict imports and movements to those from Pest Free Areas. While no such Areas have currently been designated, they may be in future and statutory notification will provide a means of monitoring the movement of ash trees into the UK, if this happens.

- 7.3 While imports from third countries are already subject to statutory notification (through phytosanitary certification requirements), statutory notification for intra-EU trade will mean that anyone importing trees of the genera concerned (including young planting material and seeds) must notify Fera in advance of their introduction, providing certain limited information about their destination. The same requirements will apply for specified genera imported from Switzerland under the terms of the EU-Swiss Agreement. Without such notification, there is no means of monitoring reliably the import of such plants (irrespective of whether they are Plant Passported). The aims of statutory notification are to: (a) raise awareness about the threats to these species; (b) provide intelligence about the level of trade; (c) facilitate tracing in the event of problems; (d) allow targeted inspections to be carried out by Fera and the Forestry Commission; (e) generate evidence in support of further measures, if

needed. It will not be the intention to inspect every consignment notified, but the information will be helpful in making best use of surveillance resources, to focus on the highest risk plants (in terms of their source and intended destination etc). It will also help target follow up inspections and/or submission of samples for laboratory analysis, in compliance with Article 12 of the Plant Health Directive. Some minor changes have been made to the existing notification requirements for potatoes, which simplify them and largely bring them into line with the new requirements for specified tree genera. In particular, it will no longer be a requirement to provide details of the means of import or the point of entry.

8. Consultation outcome

- 8.1 Informal consultation has been undertaken with key stakeholder organisations, including the Horticultural Trades Association, National Farmers Union, and CONFOR. Support has been expressed by the National Farmers Union and the HTA, with a response outstanding from CONFOR. The notification requirements have been adapted to take on board comments received from HTA, particularly in relation to the information requested and the timing of notification.

9. Guidance

- 9.1 The main stakeholders have been informed of the proposed changes and a summary of the measures will be placed on the Fera website. Notification will be via a web based system, which will include instructions for users.

10. Impact

- 10.1 Importers bringing the relevant trees into the country will be required to notify Fera of what they are importing, where the trees are from, and their intended destination. They will be able to do this by entering details of their consignments onto an online system. This will take 5-10 minutes per notification. The details of implementation have been discussed with industry representatives, who are supportive of the scheme, and have advised on its operation. 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 a 5-8 hours per year. It is estimated that there are no more than 1000 businesses importing trees, and this is likely to be a high estimate. This estimate is based on the number of registered plant passporters, nursery businesses which import plants for onward sale. There are 500 of these in England, though not all of them will trade in the tree genera covered by this requirement. In addition there will be a number of other businesses that import trees for their own end use. There are no firm numbers for these because they are not currently required to register with Fera, and are not covered by a single readily identifiable trade body. The total number of businesses affected is therefore an estimate, but it is believed that it represents a “worst case scenario”. The proposal has been cleared through the Regulatory Policy Committee and the Reducing Regulatory Committee.

11. Regulating small business

- 11.1 The legislation applies to all businesses importing the specified genera of trees, including small businesses. 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 to make special provisions for small businesses.

12. Monitoring and review

- 12.1 Defra will continue to monitor the situation and the need for future amendments to take account of new or revised risk assessments, pest interceptions and other developments.

13. Contact

- 13.1 Richard McIntosh, Room 10GA07, Department for Environment, Food and Rural Affairs, Sand Hutton, York, YO41 1LZ; Tel: 01904 465632; e-mail: richard.mcintosh@fera.gsi.gov.uk can answer any queries regarding these Regulations.