

2012 No. 2707

PLANT HEALTH

The Plant Health (Forestry) (Amendment) Order 2012

Made at 1p.m. on 29th October 2012

Laid before Parliament 29th October 2012

Coming into force in accordance with article 1(2)

The Forestry Commissioners make this Order in exercise of the powers conferred by sections 2(1) and 3(1) of the Plant Health Act 1967(a) and paragraph 1A of Schedule 2 to the European Communities Act 1972(b).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(c). It appears to the Forestry Commissioners that it is expedient for the references to Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections(d) to be construed as references to that instrument as amended from time to time.

Title and commencement

- 1.—(1) This Order may be cited as the Plant Health (Forestry) (Amendment) Order 2012.
(2) This Order comes into force—
(a) subject to sub-paragraph (b), at 6 p.m. on 29th October 2012;
(b) for the purposes of article 2(5), (6) and (7), on 21st November 2012.

Amendment of the Plant Health (Forestry) Order 2005

- 2.—(1) The Plant Health (Forestry) Order 2005(e) is amended as follows.
(2) In article 2(1) (general interpretation), after the definition of “IPPC”, insert—
““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

(a) 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.
(b) 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
(c) Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.
(d) OJ No L 158, 18.6.2008, p 41.
(e) S.I. 2005/2517, as amended by S.I. 2006/2696, 2008/644, 2009/594, 3020 and 2011/1043.

by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(a);”.

(3) In article 8(2)(d) (exceptions from certain prohibitions and requirements), for “except in bonsai form” substitute “other than seedlings of *Fraxinus* L. and seedlings in bonsai form”.

(4) In article 21 (exceptions from certain prohibitions and requirements), after “small quantities of any relevant material”, insert “other than trees intended for planting of *Fraxinus* L.”.

(5) For article 38 (licences to carry out prohibited activities), substitute—

“Licences to carry out activities prohibited by this Order

38.—(1) Notwithstanding any of the provisions of this Order, any tree pest or relevant material may be landed, kept, stored, sold, planted, moved or otherwise disposed of in Great Britain and any other thing prohibited by this Order may be done under the authority of a licence granted by the Commissioners—

- (a) in exercise of any derogation permitted by the Directive; or
- (b) for trial or scientific purposes, or for work on varietal selections, in relation to a domestic quarantine tree 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 tree pest” means a tree pest which is not listed in Annex I or Annex II to the Directive and which is not normally present in, and is likely to be injurious to trees in, Great Britain.”.

(6) In the heading of article 39 (licences for trial or scientific purposes and for work on varietal selections), after “varietal selections”, insert “permitted by Directive 2008/61/EC”.

(7) In article 39—

- (a) in paragraphs (1), (2) and (6), for “Directive 95/44/EC” substitute “Directive 2008/61/EC” in each place occurring; and
- (b) for paragraph (7)(b), substitute—

“(b) “Directive 2008/61/EC” means Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections, as amended from time to time.”.

(8) In Schedule 1(b) (tree pests which shall not be landed in or spread within Great Britain), after item 1 under the heading “Fungi”, insert—

“1a *Chalara fraxinea* T. Kowalski, including its teleomorph *Hymenoscyphus pseudoalbidus*, a cause of Ash Dieback”.

(9) In Part A (relevant material which may not be landed in or moved within Great Britain if that material is carrying or infected with tree pests) of Schedule 2, after item 2a of the table(c), insert—

“2b	Trees intended for planting of <i>Fraxinus</i> L.	<i>Chalara fraxinea</i> T. Kowalski, including its teleomorph <i>Hymenoscyphus pseudoalbidus</i> , a cause
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(a) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

(b) There are amendments to Schedule 1, but none is relevant.

(c) Item 2a was inserted by S.I. 2009/594, article 2(4)(a). There is another amendment to Schedule 2, but it is not relevant.

of Ash Dieback”.

(10) In Part A (relevant material, from third countries, which may only be landed in Great Britain if special requirements are satisfied) of Schedule 4—

- (a) in the third column of item 19a of the table(a), for “The trees shall be accompanied by an official statement” substitute “Without prejudice to the requirements in item 19b, the trees shall be accompanied by an official statement”; and
- (b) after item 19a, insert—

“19b	Trees intended for planting of <i>Fraxinus</i> L. which originate in a third country	Without prejudice to the requirements in item 19a, the trees shall be accompanied by a phytosanitary certificate which has been issued by the national plant protection organisation of the country from which the trees originate and which includes under the heading “Additional Declaration” an official statement that the trees 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 B (relevant material, from another part of the European Union, which may only be landed in or moved within Great Britain if special requirements are satisfied) of Schedule 4, after item 8 of the table(b), insert—

“9	Trees intended for planting of <i>Fraxinus</i> L.	The trees 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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(12) In Part A (relevant material which may only be landed in Great Britain if accompanied by a phytosanitary certificate) of Schedule 5, after item 1a(c), insert—

“1b. Seeds intended for planting of *Fraxinus* L.

1c. Parts of trees, other than fruits and seeds, of *Fraxinus* L.”.

(13) In Part A (relevant material, from another part of the European Union, which may only be landed or moved in Great Britain if accompanied by a plant passport) of Schedule 6(d), after paragraph 5, insert—

“6. Trees intended for planting of *Fraxinus* L.”.

(14) 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(a), after paragraph 5, insert—

(a) Item 19a was inserted by S.I. 2009/594, article 2(5)(f). There are other amendments to Part A, but none is relevant.
(b) Item 8 was inserted by S.I. 2009/594, article 2(6)(c). Part B was amended by S.I. 2011/1043, article 4(1); there are other amendments to that Part, but none is relevant.
(c) Item 1a was inserted by S.I. 2008/644, article 2(6). There are other amendments to Schedule 5, but none is relevant.
(d) Schedule 6 was amended by S.I. 2011/1043, article 4(1); there are other amendments, but none is relevant.

“6. Trees intended for planting of *Fraxinus* L.”.

The Official Seal of the Forestry Commissioners

Tim Rollinson

A Forestry Commissioner and Director General of the Forestry Commission

At 1p.m. on 29th October 2012

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) (“the principal Order”) to introduce emergency 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 and the movement within Great Britain of *Chalara fraxinea* T. Kowalski (article 2(8));
- (b) prohibits the landing in and the movement within Great Britain of trees intended for planting of *Fraxinus* L. which are infected with *Chalara fraxinea* T. Kowalski (article 2(9));
- (c) imposes additional requirements on the landing and movement within Great Britain of trees intended for planting of *Fraxinus* L. (article 2(10) to (13)); and
- (d) imposes additional requirements on the consignment from Great Britain to other parts of the European Union of trees intended for planting of *Fraxinus* L. (article 2(14)).

The definition of “tree” in article 2(1) of the principal Order includes seeds and other parts of a tree.

This Order also:

- (a) implements Commission Directive 2008/61/EC (establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections) (OJ No L 158, 18.6.2008, p 41), which replaced Commission Directive 95/44/EC (OJ No L 184, 3.8.1995, p 34) (article 2(7)); and
- (b) confers powers on the Forestry Commissioners to grant licences for trial or scientific purposes or for work on varietal selections in relation to certain tree pests (article 2(5)).

Article 2(7) makes the references to Commission Directive 2008/61/EC in the principal Order ambulatory.

(a) Schedule 7 was amended by S.I. 2011/1043, article 4(1); there are other amendments, but none is relevant.

The Explanatory Memorandum for this instrument is available alongside the instrument at www.legislation.gov.uk.