

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (FORESTRY) (AMENDMENT) (No.2) ORDER 2009**

**2009 No. 3020**

1. This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order amends the Plant Health (Forestry) (Order) 2005 (S.I. 2005/2517) (“the principal Order”) and implements Commission Directive 2009/118/EC (OJ No. L239, 10.9.2009, p.51) amending Council Directive 2000/29/EC of 8<sup>th</sup> May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L169, 10.7.2000, p.1).

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

3.1 None.

**4. Legislative Context**

4.1 Council Directive 2000/29 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (“the Plant Health Directive”) establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in Great Britain, for forestry matters, by the principal Order. Similar but separate legislation operates for non-forestry matters in England, Scotland and Wales, and for both forestry and non-forestry matters Northern Ireland.

4.2 Imports of “relevant material”, as defined in the principal Order, and coming from third countries, except Switzerland, are subject to plant health controls on first arrival and before being cleared from Customs control for entry into the Community. Wood and wood products subject to these controls are identified by reference to the Customs Nomenclature code laid down in Annex I, Part two to Council Regulation (EEC) No. 2658/87 in the Plant Health Directive. The relevant CN codes are set out in Annex V, Part B of the Plant Health Directive. This is implemented in the principal Order by Article 6(2) and by descriptions of relevant material in Schedule 5, which makes reference to Annex V, Part B of the Plant Health Directive.

4.3 The Plant Health Directive has been further amended by Commission Directive 2009/118/EC to reflect amendments to the Customs Nomenclature codes for certain wood products. The amending Order achieves this by making the definition of

Council Directive 2000/29/EC in the principal Order ambulatory. By making references to the Directive ambulatory future amendments to those references will also be captured without further need to amend the principal Order.

4.4 The Forestry Commission is also making minor amendments in item 8 of Schedule 3 to the description of countries from which the import of soil or certain types of growing medium is prohibited to make it clearer that this includes European countries not on mainland Europe.

4.5 The description of relevant material at item 30 of Schedule 4, Part A (soil or certain types of growing medium) has also been amended to ensure that soil or growing medium which is attached to or accompanies trees is subject to the requirements set out in that item.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **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 Commodities which are subject to Customs formalities at the point of first entry into the European Community are identified by a unique Customs Nomenclature (CN) code which is prescribed in Council Regulation (EEC) No. 2658/87. The CN codes for wood and wood products which are subject to plant health controls are prescribed in Annex V Part B of the Plant Health Directive. These have not been reproduced in the principal Order but are instead cross referenced in the relevant Schedule. The CN codes for some of the wood and wood products, as well as the supporting description of the commodity covered, have recently been amended and there may be further amendments in the future. The Forestry Commission has decided that it would be appropriate to make the reference to the Plant Health Directive in the principal Order ambulatory. This will implement the current amendments to the Plant Health Directive and will ensure that future technical amendments such as these will be implemented without the need for further amendments to the principal Order.

7.2 We have also taken the opportunity to amend the description of those countries from which the import of soil and certain growing medium is prohibited, which is set out in Schedule 3 of the principal Order. This will more clearly implement the equivalent requirement in Annex III to the Plant Health Directive, making it clearer that the import of these products is not permitted from European third countries which are not on mainland Europe.

7.3 A minor textual amendment has also been made in Schedule 4 again with the purpose of providing greater clarity to the requirements in relation to soil and growing

medium which is attached to, or accompanies trees, imported from those countries from which it is permitted to do so.

- **Consolidation**

7.4 There are no immediate plans to consolidate the Plant Health (Forestry) Order 2005 but an informal consolidation will be made available, free, on the Forestry Commission website at [www.forestry.gov.uk/planthealth](http://www.forestry.gov.uk/planthealth).

## **8. Consultation outcome**

8.1 A formal consultation on these changes was not considered necessary on this occasion as the main burden of compliance is on the producer or exporter in the country from which the regulated plants and plant products are to be shipped .

## **9. Guidance**

9.1 The Forestry Commission publishes guidance for those affected by its legislation on its website and also provides advice for importers and other interested parties by way of newsletters. These are available, free, at [www.forestry.gov.uk/planthealth](http://www.forestry.gov.uk/planthealth)

## **10. Impact**

10.1 The Order will have minimum impact on business, and no impact on charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business, but will have minimal impact.

11.2 Ensuring compliance with the landing requirements applying to the importation of regulated plants and plant products, including wood and wood 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 Great Britain. 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 it, it is not appropriate, or possible within the limitations of the Plant Health Directive, to make special provisions for small businesses. There are, however, provisions for reducing the frequency of inspections of specified plant products, including wood, based on a minimum level of trade over a three-year period where there is evidence to show that the level of compliance has been high.

## **12. Monitoring & review**

- 12.1 The Forestry Commission will maintain records of imports of regulated wood and wood products, and the outcome of its inspections to check for compliance. If there is sufficient evidence to demonstrate that the qualifying criteria for reducing the frequency of inspections, and thus the associated costs, can be met for any particular commodity, this will be presented to the European Commission. The Forestry Commission will also maintain records of new pest interceptions and where it becomes apparent that import requirements require to be amended to address these, information will be presented to the European Commission with a request for an amendment to the Plant Health Directive.

**13. Contact**

Roddie Burgess (Plant Health Service, Forestry Commission, 231 Corstorphine Road, Edinburgh EH12 7AT. Tel 0131 314 6401, e-mail [roddie.burgess@forestry.gsi.gov.uk](mailto:roddie.burgess@forestry.gsi.gov.uk)) can answer any queries regarding the instrument.

## TRANSPOSITION NOTE

**Transposition note for Council Directive 2000/29/EC (as amended by Commission Directive 2009/118/EC) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.**

<b>PROVISION OF AMENDED DIRECTIVE</b>	<b>IMPLEMENTATION</b>
Annex II, Part B, point 2 of heading (b) (third column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex II, Part B, point 0.1 of heading (c) (third column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex III, Part B, point 1 (second column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex III, Part B, point 2 (second column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex IV, Part A, Section I, point 16.5 (second column)	Nothing to implement. Does not relate to forestry.
Annex IV, Part A, Section I, point 46 (second column)	Nothing to implement. Does not relate to forestry.
Annex IV, Part B, points 1, 2, 3, 4, 5 and 6 (second column)	Nothing to implement. Corrects mistakes in cross-references to the Annexes of the Directive which are not present in domestic legislation.
Annex IV, Part B, point 6.3 (third column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex IV, Part B, point 14.9 (third column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex IV, Part B point 21 (third column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.
Annex IV, Part B point 21.3 (third column)	Nothing to implement. Relates to other territories which are no longer recognised as protected zones.

Annex V, Part A, Section I, point 1.7(b) (first column)	Article 2(1) Schedule 6, Part A, paragraph 1 Schedule 7, Part A, paragraph 1
Annex V, Section I, Part B, point 6(b) (fourth entry)	Article 2(1) Schedule 5, Part A, paragraph 4
Annex V, Section I, Part B, point 6(b) (first column)	Article 2(1) Schedule 5, Part A, paragraph 4