

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

2012 No. 2707

1. This explanatory memorandum has been prepared by the Forestry Commission 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 (Forestry) Order 2005 ('the principal Order') which contains measures to prevent the introduction and spread of harmful tree pests and diseases. It introduces emergency measures against the fungal disease *Chalara fraxinea* (Chalara dieback of ash). It also amends the licensing arrangements to permit trials and scientific work on domestic quarantine tree pests and implements Commission Directive 2008/61/EC (OJ No L 158, 18.6.2008, p 41).

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

3.1 The emergency measures against the fungal disease *Chalara fraxinea* come into force at 6pm on 29 October 2012 in breach of the rule requiring instruments to be laid at least 21 days before they come into effect. Urgent action is necessary to restrict the movement of ash trees for planting to those deriving from pest free areas because of evidence that the import trade in ash planting material normally begins in November and evidence that ash trees infected with *Chalara fraxinea* were supplied from Germany, the Netherlands and Belgium during 2011 and 2012. While the Forestry Commission and the Food and Environment Research Agency have been acting under general plant health powers in response to findings, the proposed legislation will improve protection against the risk of further introduction and spread of the organism, by requiring future movements of ash planting material to come from pest-free areas. Such legislation would have been based on poor technical evidence (in the absence of a risk assessment and surveillance data) if introduced earlier and would have had little practical impact because there is little movement of ash for planting during spring and summer. The process followed since the UK's first interception in February 2012 is:

- investigation into the scale of the import trade in ash trees for planting and the level of infection from the first confirmed finding in February 2012 to August 2012
- investigation into the level of infection in the nursery trade in Great Britain
- investigation into the presence of the organism in the wider environment in Great Britain
- preparation of a pest risk assessment completed August 2012

- shortened consultation on the pest risk assessment concluding on 26 October 2012

The outcome of the consultation and current surveillance position support the introduction of the proposed legislation. Evidence from 2010 was that over 200,000 trees had been exported to the UK from other Member States during the 21 day period from 29 October to 19 November. There is a real risk that importers will bring in the same number or even more plants, which potentially could be infected, if the legislation is delayed by these 21 days.

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 produce which are specified in the Annexes of the Directive. The Plant Health Directive is implemented in Great Britain for forestry matters by the principal Order.

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 temporarily 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. The Order amends the principal Order to introduce domestic measures to prevent the introduction and spread of *Chalara fraxinea* within Great Britain. Equivalent emergency measures in relation to Northern Ireland were made on 26 October 2012.

4.3 The Order also implements Commission Directive 2008/61/EC, which has replaced Commission Directive 95/44/EC (OJ No L 184, 3.8.1995, p 34). Commission Directive 2008/61/EC is a codified version of Directive 95/44/EC and 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 reference to Directive 2008/61/EC has been made ambulatory, as this Directive sets out technical requirements for the EU licensing regime, which are updated from time to time. The licensing regime facilitates work by universities, research institutes and other organisations undertaking work on the risks from and control of harmful organisms. An ambulatory reference will support the efficient and timely implementation of future changes to the regime.

4.4 In addition, the Forestry Commission is amending the Order to extend the powers of the Forestry Commissioners to enable them to grant licences so that scientific research and work can be carried out on certain harmful tree pests that are regulated only by domestic measures.

4.5 On 25 October 2012 the Secretary of State for the Environment, Food and Rural Affairs announced that, subject to the outcome of a consultation exercise, which concluded on 26 October 2012, his intention to introduce a ban on imports and tight restrictions on ash movements in Great Britain on Monday 29 October 2012 (official report column 1063).

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 *Chalara fraxinea* (chalara) 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 unregulated and 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 represents a substantial threat to the UK's forests and a risk assessment has been prepared which describes the nature and extent of that threat and possible measures to address it. There has been a high level of public interest in the evidence emerging about this disease with national media coverage including peak-time news reports on television and radio. The Government has announced that, subject to the outcome of a consultation exercise on this issue, it intends to put a ban on the importation and movement of ash plants in place and the importance that it attaches to the condition of trees is recognised in the Tree Heath and Plant Biosecurity Action Plan, which was published in October 2011.

7.2 Surveys of premises growing and trading ash and the wider environment have been carried out. To date these indicate that chalara is established with limited distribution in parts of East Anglia, but findings elsewhere are limited to nurseries with links to imported plants over the last 5 years or sites which have planted ash from such material. Over the last 10 years Great Britain has annually imported an average of over 500,000 ash trees for forestry purposes, mainly from Germany, the Netherlands, Belgium and France. Substantial quantities are also imported for non-forestry purposes. Investigations in 2012 have revealed 12 findings of chalara at nurseries associated with imported ash plants so the potential for further entry to the UK is very high. There would be significant economic, environmental and social impacts if chalara was allowed to establish. A consultation has been carried out and the outcome is reported below.

7.3 The Food and Environment Research Agency has notified the European Commission and the Member States about the findings of chalara on imported ash trees. The Commission and Member States have also been notified verbally that, subject to the outcome of a consultation exercise, the UK intends to bring in legislation as a temporary measure to control the import and movement of ash plants and written details will be provided once the legislation is approved. The Commission in association with Member States will consider whether such arrangements should be introduced into EU legislation. The measures in the proposed Order will require countries to meet the requirements for the establishment of areas free from chalara according to the International Standard for Phytosanitary Measures (ISPM No. 4 1995). Movement of ash plants from such pest-free areas will be controlled within the EU by plant passporting arrangements and plants from outside of the EU must be accompanied by an official statement to say that they have been grown in an area free from chalara. The Order also amends the exceptions to the prohibition on movement for small quantities of material intended for household use and the exception to plant passporting requirements for direct sales of ash for household use; these will not apply to movements of ash trees for planting.

7.4 The Horticultural Trades Association and some other organisations involved in importing substantial numbers of ash plants, like the Woodland Trust, have announced a voluntary ban on ash imports. While these announcements are very welcome it is not thought that these would be enough in themselves to prevent entry of ash into Great Britain which could be at risk from infection. The Trade has not universally called for restrictions on ash movement in Great Britain but the recent findings in nurseries demonstrate that there is still a considerable risk from moving infected nursery stock. The majority of respondents to the consultation did not favour a self-regulatory approach.

7.5 Commission Directive 2008/61/EC has replaced Commission Directive 95/44/EC. Commission Directive 2008/61/EC is a codified version of Commission Directive 95/44/EC. 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. A Transposition Note for Directive 2008/61/EC is at Annex.A. The principal Order does not currently allow licences to be granted to allow trials or scientific research and for work on varietal selections in relation to harmful organisms not listed in the Plant Health Directive. There are a significant number of pests, like chalara, which are not listed in the Plant Health Directive but which are harmful to trees 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 to trees and means by which we can mitigate this threat.

- Consolidation

7.6 The Plant Health Directive is currently under review. There are therefore no immediate plans to consolidate the principal Order.

8. Consultation outcome

8.1 A shortened 8-week consultation was carried on a pest risk assessment prepared to evaluate the risk of chalara 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 legislation to be prepared and laid before the planting season for ash begins in November. The consultation was hosted on the Food and Environment Research Agency website linked to by 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 56 responses 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 (see 7.2 above):

- if the disease was not found to be widely established then maintain Great Britain free of chalara 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, with legislative restrictions on ash imports and movements. However 29% 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 the Food and Environment Research Agency and the Forestry Commission,

9. Guidance

9.1 The Forestry Commission has part of its website devoted to chalara which contains information about the disease and questions and answers about the proposed legislation. When the legislation comes into force the Forestry Commission and the Food Environment Research Agency will contact the businesses already registered with them for the trade in plants and seed as well as other businesses who 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 The annual impact on business, charities or voluntary bodies has been estimated to be £250,000. This is 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 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 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 passport authorisation of approximately £100,000 per year may fall to the public sector until such time that chalara is listed as an EU quarantine pest.

10.3 A rapid pest risk assessment was prepared for chalara and this has been subject to scrutiny through a public consultation exercise. This assessment will be updated to take account of new information about the disease distribution. An Impact Assessment has not been prepared for this instrument as the Forestry Commission is a non-Ministerial Government Department which has not subscribed to the policy of preparing IAs for Regulatory Policy Committee and Reducing Regulation Committee clearance. However the Forestry Commission is in the process of completing an assessment of the impact of the legislation to prevent the establishment and spread of chalara and will publish this on their website. The IA has not yet been completed because of recent evidence about the distribution of the disease. The disease had not been known to be present in the wider environment, but it was recently discovered to be present with limited distribution in East Anglia. The IA will be completed to reflect this development. There are no negative impacts associated with the amendments to the Order to permit licensing of domestic quarantine tree pests, It is anticipated that this will be purely an administrative exercise for those research establishments which are already licensed to carry out work on EU quarantine tree pest.

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 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.

12. Monitoring & review

12.1 A substantial programme of monitoring is underway and this is used by Policy teams to develop strategy for dealing with chalara. The Food and Environment Research Agency will continue to trace forward consignments of plants which are confirmed as infected with chalara 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 continue to trace forward consignments of plants which are confirmed as infected with chalara 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. The first possible review of strategy will take place by the European Commission in November 2012 when the Food and Environment Research Agency submits a summary of the monitoring to date, the updated PRA and a copy of the new legislation. The next stage of review is due in spring 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 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 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

Dr John Morgan (Plant Health Service, Forestry Commission, 231 Corstorphine Road, Edinburgh EH12 7AT. Tel 0131 314 6401, or e-mail john.morgan@forestry.gsi.gov.uk) can answer any queries regarding the instrument.

Annex A Transposition Note

Transposition note for 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 and scientific purposes and for work on varietal selections

Article of Directive	Purpose	Transposition (References below are to the Plant Health (Forestry) Order 2005, as amended by the Plant Health (Forestry) (Amendment) Order 2012)
Article 1	<p>Requires an application to be made to the responsible official body for the use of certain harmful organisms, material and objects (“listed objects”) in any activity for trial or scientific purposes or for work on varietal selections before the listed objects can be introduced or moved within the relevant member state.</p> <p>Sets out the information to be included in an application under article 1.</p>	<p>Article 39(1) (for tree pests and relevant material, as defined in article 1(2)).</p> <p>The Forestry Commissioners are the responsible official body in Great Britain in relation to trees pests and relevant material, as defined in article 1(2).</p>
Article 2	<p>Provides for approval of the activity to be given if the general conditions in Annex I are satisfied and for approval to be withdrawn if the conditions are no longer satisfied.</p> <p>Provides for approval to be given before the introduction and movement within the relevant member state of a listed object.</p> <p>Sets out the conditions of the introduction and movement of a listed object.</p> <p>Provides for the monitoring of the approved activity and sets out how the approved activity must be monitored by the responsible official body.</p>	<p>Article 39(1) to (5) (for tree pests and relevant material, as defined in article 1(2)).</p> <p>Article 43(1)(a)(xii) and (b).</p>
	Notification of certain quarantine measures to the European Commission and other member states	No transposition required
Articles 3 to 7		No transposition required

