

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (ENGLAND) (AMENDMENT) ORDER 2014**

**2014 No. 979**

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. **Purpose of the Instrument**
  - 2.1 This instrument amends the Plant Health (England) Order 2005 (S.I. 2005 No. 2530) (“the principal Order”) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It extends the existing statutory notification scheme for certain tree species to include elm planting material and also implements Commission Implementing Directive 2014/19/EU and Commission Implementing Decision 2014/62/EU.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
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 EU<sup>1</sup> (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in England by the Plant Health (England) Order 2005 and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/ 2517) which extends to Great Britain. Similar but separate legislation to the principal Order operates in Scotland, Wales and Northern Ireland.
  - 4.2 This instrument], will amend the principal Order by strengthening existing measures intended to protect the health of certain tree species. These amendments will come into force on 6th May 2014. It will also revoke the plant health provisions) in the principal Order regarding *Diabrotica virgifera virgifera* Le Conte (Western corn rootworm with effect from 1st June 2014.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England only.

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

## 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

### Statutory notification of imports of elm planting material

- 7.1 Elm plants for planting are regulated under the EU Plant Health Directive and may only be imported into the EU with a phytosanitary certificate declaring freedom from harmful organisms. *Candidatus* Phytoplasma ulmi (Elm yellows) are listed in the EU Plant Health Directive, (as Elm phloem necrosis mycoplasma), because of their lethal effects on native elm species in North America.
- 7.2 Although listed in the Plant Health Directive, there have been a number of outbreaks of elm yellows in the EU (Italy, France and Germany). Findings on European elm species have tended to be less severe to date (general decline, stunting, leaf yellowing). This is because European (and Asian) elm species are considered to be moderately or highly resistant to elm yellows. However, smaller trees tend to be worse affected by elm yellows and even tolerant species may sometimes develop severe symptoms or die. The Field elm (*Ulmus minor*) is known to be susceptible and is widespread, particularly in the South West and East of England whereas the native Wych elm (*Ulmus glabra*) is known to show some resistance.
- 7.3 The movement of elm planting material in the EU is not regulated and movements do occur between Member States, not least in material found by breeders to be resistant to Dutch Elm Disease. Some of these breeding programmes are located in areas known to be infected with elm yellows.
- 7.4 The UK population of mature elm trees was devastated by the effects of Dutch Elm Disease in the 1970s. The trees that remain are mainly either young trees in hedgerows and woodlands or those which have been protected in management areas as in Brighton and Hove. However, although Dutch Elm Disease has killed many mature elms, particularly in the south of England, many millions of young, regenerated elms remain across the country, despite having been exposed to repeated waves of the disease. It should be noted that such regeneration offers little prospect of developing resistance to Dutch Elm Disease, as the regrowth is from rootstocks of the same tree variety, and the trees may be subsequently affected by Dutch Elm Disease once they achieve a certain girth.
- 7.5 There are also pockets of mature elm which remain in areas such as Cambridgeshire and East Sussex and Brighton and Hove is home to the National Elm Collection. The Isle of Man has also successfully managed to retain a healthy population of Wych elm. Some of the remaining elms include the largest and oldest surviving specimens in Europe. Elms are also important for conservation purposes, including as food for rare butterflies; trees are being

imported for trial purposes, to promote numbers of White-letter Hairstreak butterflies, a species closely associated with elm.

- 7.6 There had been no findings of elm yellows in the UK prior to this year, but it has now been confirmed on a propagating nursery in the West of England and a further nursery in the South West of England. An eradication programme is in process and a pest risk analysis (PRA) has been prepared to help determine longer term policy and provide the technical basis to help direct further action against elm yellows. This includes consideration as to whether strengthened EU protection should be sought (e.g. through Protected Zone status) and whether additional precautionary measures should be introduced in the meantime. A public consultation on the PRA ran from 26 February to 9 April 2014.
- 7.7 We currently have no means of knowing the precise details of consignments of elm arriving in the UK from the EU and Switzerland and so there remains a risk that more infected trees could be imported into the UK. A statutory notification scheme for imports of elms from other EU member states is therefore being introduced.
- 7.8 Notification of imports will help raise awareness, generate evidence about the scale of trade and facilitate inspections in the meantime. General powers in the principal Order are available to take action in the event of findings. A notification system is already in place on a voluntary basis, but experience with other tree species indicates a statutory scheme is needed to ensure good compliance. Such a scheme will be helpful irrespective of the outcome of the published PRA.
- 7.9 This instrument extends the existing statutory notification scheme in article 19(6) to (8) of the principal Order to require notification of imports of elm planting material from other member States or Switzerland. It also makes a minor change to the requirements to be notified (for all the species covered by the notification requirement), to require the country of export to be indicated. This corrects a loophole, involves negligible additional burden, but is important information for Inspectors.
- 7.10 Similar measures are being considered by the Devolved Administrations.

#### Commission Implementing Directive 2014/19/EU

- 7.11. Following a review of the spread and establishment of *Diabrotica virgifera virgifera* Le Conte (Western corn rootworm) across the EU the Commission has concluded that no measures are feasible to eradicate it or to effectively prevent its further spread. Commission Implementing Directive 2014/19/EU means that *Diabrotica* will no longer be regarded as a “quarantine” pest in the EU from 1 June 2014 and there will no longer be a legal requirement to prevent the introduction of *Diabrotica* into, or its spread within, the EU. In addition, Commission Decision 2003/766/EC on emergency measures to prevent the spread within the Community of *Diabrotica virgifera* Le Conte has been repealed. The Plant Health (England) (Amendment) Order 2014 implements these changes and revokes the existing provisions in the principal Order in relation to this organism, including the designation of zones around certain

airports (Heathrow, Gatwick, Stansted, Bristol and East Midlands), in which compulsory rotation of maize is required.

- 7.12 There is only one outbreak of *Diabrotica* under eradication in the UK at present. There will be no further statutory requirements imposed in relation to this outbreak. Similarly, should outbreaks occur in future, no statutory restrictions will be imposed.
- 7.13 A new Commission Recommendation (2014/63/EU) has been published, promoting monitoring for the presence and distribution of *Diabrotica*, and integrated pest management to suppress populations. It also encourages that appropriate information is made available on the use of integrated pest management, including plant protection products, and that other activities are pursued, such as training and research. These actions are in line with Directive 2009/128/EC on the sustainable use of pesticides. The UK measures and activities to implement the Directive, including the role of integrated pest management, are set out in the UK National Action Plan.

## **8. Consultation outcome**

- 8.1 Consultation is currently underway on a PRA prepared to help determine longer term policy and provide the technical basis to help direct further action against elm yellows. The PRA was published for public consultation on 26 February 2013 to run until 9 April.
- 8.2 The National Farmers Union and Maize Growers Association were consulted on the proposal to deregulate *Diabrotica* and both supported this initiative.

## **9. Guidance**

- 9.1 The main stakeholders have been informed of the proposed changes and details will be placed on the Defra website. The Plant Health and Seeds Inspectorate will liaise with individual clients about the new measure.

## **10. Impact**

- 10.1 We have secured Regulatory Policy Committee and Cabinet Committee approval to use the fast-track clearance procedure for extending the statutory notification scheme to include elm planting material. A copy of the regulatory triage assessment is published alongside the Order and this Explanatory Memorandum on [legislation.gov.uk](http://legislation.gov.uk). A validation impact assessment will be prepared after the measure has been implemented. An impact assessment has not been prepared for the other changes, which are minor in nature or reflect technical adjustments to the EU regime.

## **11. Regulating small business**

- 11.1 The new measures will apply to all businesses, including micro-businesses, importing elm trees. The risk of introducing harmful organisms is not mitigated by the size of the business importing material.

## **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 Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH;  
Tel: 0300 060 3806; e-mail: [iain.johnstone@defra.gsi.gov.uk](mailto:iain.johnstone@defra.gsi.gov.uk) can answer any queries regarding this instrument.

## Regulatory Triage Assessment

<b>Title of regulatory proposal</b>	Update of statutory notification scheme for imported trees
<b>Lead Department/Agency</b>	Defra
<b>Expected date of implementation</b>	SNR7
<b>Origin</b>	Domestic
<b>Date</b>	
<b>Lead Departmental Contact</b>	Richard McIntosh
<b>Departmental Triage Assessment</b>	Low-cost regulation (fast track)
<p>Rationale for intervention and intended effects</p> <p>Elm plants for planting are regulated under the EU Plant Health Directive and may only be imported into the EU with a phytosanitary certificate declaring freedom from harmful organisms. <i>Candidatus</i> Phytoplasma ulmi (Elm yellows) are listed in the EU Plant Health Directive, (as Elm phloem necrosis mycoplasma), because of their lethal effects on native elm species in North America. Findings on European elm species have tended to be less severe to date (general decline, stunting, leaf yellowing). This is because European (and Asian) elm species are considered to be moderately or highly resistant to elm yellows.</p> <p>Smaller trees tend to be worse affected by elm yellows and even tolerant species may sometimes develop severe symptoms or die. The Field elm (<i>Ulmus minor</i>) is known to be susceptible and is widespread, particularly in the South West and East of England whereas the native Wych elm (<i>Ulmus glabra</i>) is known to show some resistance.</p> <p>Although listed in the Plant Health Directive, there have been a number of outbreaks in the EU (Italy, France and Germany). The movement of elm planting material in the EU is not regulated and movements do occur between Member States, not least in material found by breeders to be resistant to Dutch Elm Disease. Some of these breeding programmes are located in areas known to be infected with elm yellows.</p> <p>The UK population of mature elm trees was devastated by the effects of Dutch Elm Disease in the 1970s. The trees that remain are either as young trees in hedgerows and woodlands or those which have been protected in management areas as in Brighton and Hove. However, although Dutch Elm Disease has killed many mature elms, particularly in the south of England, many millions of young, regenerated elms remain across the country, despite having been exposed to repeated waves of the disease. It should be noted that such regeneration offers little prospect of developing resistance to Dutch Elm Disease, as the regrowth is from rootstocks of the same tree variety, and the trees may be subsequently affected by Dutch Elm Disease once they achieve a certain girth.</p> <p>There are also pockets of mature elm which remain in areas such as Cambridgeshire and East Sussex and Brighton and Hove is home to the National Elm Collection. The Isle of Man has also successfully managed to retain a healthy population of Wych elm. Some of the remaining elms include the largest and oldest surviving specimens in Europe. Elms are also important for conservation purposes, including as food for rare butterflies; trees are being imported for trial purposes, to promote numbers of White-letter Hairstreak butterflies, a species closely associated with elm.</p> <p>There had been no findings of elm yellows in the UK prior to this year, but it has now been confirmed on a propagating nursery in the West of England and a further nursery in the South West of England. An eradication programme is in process and a Pest Risk Analysis(PRA) has been prepared to help determine longer term policy and provide the technical basis to</p>	

help direct further action against elm yellows. This includes consideration as to whether strengthened EU protection should be sought (e.g. through Protected Zone status). It is too early to consider whether this is warranted now, as more information is needed about the extent to which elm yellows may already be present (through the tracing exercise). The PRA was published for public consultation on 26 February 2013.

We currently have no means of knowing the precise details of consignments of elm arriving in the UK from the EU and so there remains a risk that more infected trees could be imported into the UK. We are therefore intending to introduce a statutory notification scheme (to coincide with completion of the consultation period referred to above) for imports of elms from other EU member states. This will help raise awareness of the issue and provide intelligence on the volume and sources of trade, to help target monitoring. We will also contact the main trade associations and businesses trading elms.

More information on these harmful organisms and the potential environmental effects if they should become established in the UK is provided in the supporting evidence

In response to these developments the Secretary of State proposes to take urgent action to minimise the risk to elm trees. We are proposing to lay urgently in Parliament an order under the Plant Health Act which will add elm to the current statutory notification scheme for imported plane, oak, sweet chestnut, ash and pine planting material. The order will amend the Plant Health (England) Order 2005. Introducing such measures in England will cover the vast majority of imports into the UK, but similar measures are being considered by the Devolved Administrations. Scotland has already confirmed it will introduce equivalent legislation.

The market doesn't naturally provide incentives for the protection of plant health, due to the presence of 'externalities'. For instance if an exporter/importer seeks to protect or enhance plant health through their efforts, then others will also benefit but without having paid for the service – and this creates incentives to free-ride on others' efforts. For this reason, a system of plant health protection is justified. Specific to this policy amendment, in addition the rationale is to address the current lack of information, for example associated with the inspection of consignments, and therefore help to target surveillance and reduce entry of the disease into the UK (hence making a more effective use of the plant health budget).

Notification arrangements covering plane, oak, sweet chestnut, ash and pine planting material are in place in Scotland, with schemes under consideration in Wales and Northern Ireland.

#### Viable policy options (including alternatives to regulation)

1. Regulation to extend the existing statutory notification scheme to require notification of imports of elm planting material. This is more likely to be effective in securing the desired behaviour because non-compliance will attract a fine of £5,000 under existing plant health legislation. This is the preferred option.

2. Voluntary notification by importers of elm planting material. Based on experience from introduction of the existing statutory notification schemes, it is not considered that relying on voluntary notification will be sufficient. The impact of importing infected trees falls more heavily on other parties (land owners, public authorities, the wider public) than it does on importers, and so the incentive to register voluntarily is weak. Under the recommended option, voluntary notification would be encouraged pending the introduction of Regulations, which may help to raise awareness and gather some evidence, but past experience suggests that the level of compliance would not be high.

#### Initial assessment of business impact

The introduction of the statutory notification scheme in January 2013, that requires pre-notification of imports from other member states, included in its first 12 months imports of plane (74 notifications, from 22 businesses), oak (634 notifications from 60 businesses), sweet chestnut (89 notifications from 39 businesses). In Autumn 2013, pine was added to that list (76 notifications from 25 businesses). The proposal is now to add elm to the list also.

A time cost of 5-10 minutes per notification was previously estimated, to enter details of consignments onto an online system, or make a phone call to local plant health inspector. In reality, on occasion email notifications are sent instead, but the time cost is not expected to be significantly different. This time cost would be applicable for up to 1000 tree importers (comprised of around up to 500 registered plant passporters who are English nursery businesses importing plants for onward sale, along with other businesses importing plants for their own needs). There may also be additional importers (e.g. landscape contractors) that are importing pine trees outside the nurseries supply chain. Following the cautious approach used for the addition of pine to the SNS, if we take the highest number of notifications from the species above, then around 634 notifications could be required.

At a time cost of up to 10 minutes per notification, the total time required could be up to around 100 hours. Multiplied by an upper-bound wage rate of £30 per hour (taken from the top decile of earnings for full time workers in ONS ASHE 2013 provisional results) and then applying an uplift of 30% to reflect non-labour costs, this results in an hourly cost of around £40. Multiplying this hourly rate by the total estimated hours of additional burden results in an overall cost estimate of around £4,225 per year for the inclusion of elm within the list. If projected forwards over ten years, and expressed as the 'Equivalent Annual Net Cost to Business' (EANCB), as defined in the latest BIS Impact Assessment calculator, the EANCB is around £3,500.

Consideration has also been given as to whether there are likely to be any additional costs associated with (i) follow-up inspections, or (ii) costs to Plant Health authorities for adapting existing systems, maintaining any online systems, or monitoring notifications.

Any follow up inspections carried out would be funded by Government, re-prioritising existing surveillance activities (therefore focussing the existing budget on the highest risk areas). There would be a small burden on business in co-operating with Inspectors during such inspections. An online system is already in place to notify imports of the tree genera concerned (as well as seed potatoes and some ware potatoes, which have been subject to statutory notification for a number of years). We will continue to work with those in the industry to improve this system and ensure it can be used with minimum burden. Any monitoring and enforcement costs would initially be light touch.

Although there is a risk that by providing more checks and inspections, this could lead to importers taking less care themselves, the aim is that by updating the SNS, that this will make importers more aware of potential risks. The direct intention of this scheme is to provide useful intelligence and facilitating targeted checks, which in turn will help to reduce the risks of importing diseases into the country.

The social and environmental value at risk for elm, that this statutory notification scheme may indirectly contribute towards safeguarding, is in the order of £2-3m per year for England in 2012 prices (comprised of the value of recreation, landscape, biodiversity, air pollution absorption and carbon sequestration). The value of timber at risk is expected to be negligible, given that elm is a broadleaved/hardwood tree and the vast majority (around 99%) of sawmilling activity is from softwood trees.

The method for calculating the social and environmental value, with the exception of carbon sequestration, is set out in Willis et al. 2003 in a report to the Forestry Commission entitled 'The Social and Environmental Benefits of Forests in GB'. In summary, the values (totalling £1.2bn, in 2012 prices) are estimated based on the 'stated preference' technique, whereby respondents are asked to place a value on various environmental attributes associated with trees. The aggregate values have then been divided-up based on England elm trees' area in hectares, based on The National Inventory of Woodland and Trees, as a proportion of the overall hectares of trees in GB (i.e. circa 3,700 ha as a proportion of circa 3 million hectares of trees in GB – or 0.125% of overall stock). Carbon sequestration values (totalling £0.6bn, in 2012 prices) have been estimated with a similar proportioning method, using the value of carbon sequestration as set out in a Defra 2013 report entitled 'Chalara in Ash Trees: A Framework for Assessing Ecosystem Impacts and Appraising Options'.



Given that elm is an iconic species with a low stocked area, there may be additional risks of loss associated with its rarity but this does not affect business costs.

One-in, One-two status

In Scope - less than £1m

Rationale for Triage rating

The measure is low cost and will fall well below the £1m (gross per annum) threshold for Fast Track approval.

**Departmental signoff (SCS): Julie Hitchcock** Date: 3 March 2014

**Economist signoff (senior analyst): Alistair Johnson** Date: 3 March 2014

**Better Regulation Unit signoff: Caroline O'Flaherty** Date: 3 March 2014