

2017 No. 1178

PLANT HEALTH, ENGLAND

PLANT HEALTH, SCOTLAND

**The Plant Health (Forestry) (Amendment) (England and
Scotland) Order 2017**

Made - - - - 29th November 2017

Laid before Parliament 1st December 2017

Coming into force - - 1st January 2018

The Forestry Commissioners make this Order in exercise of the powers conferred by—

- (a) so far as relating to articles 4 to 6, section 2(2) of the European Communities Act 1972(a);
- (b) so far as relating to the remaining articles, sections 2 and 3(1) of the Plant Health Act 1967(b).

The Forestry Commissioners are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union in respect of forestry(c).

Citation, commencement and application

1.—(1) This Order may be cited as the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2017 and comes into force on 1st January 2018.

(2) It applies in relation to England and Scotland only.

Amendment of the Plant Health (Forestry) Order 2005

2. The Plant Health (Forestry) Order 2005(d) is amended as follows.

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- (a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
 - (b) 1967 c. 8; section 2 was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c. 68), Part 1 of the table in paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c. 2) and S.I. 1990/2371, 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043. The powers conferred by sections 2 and 3(1) are conferred on a “competent authority”, which is defined in section 1(2). Section 1(2) provides that the Forestry Commissioners are the competent authority for England and Scotland as regards the protection of forest trees and timber from attack by pests.
 - (c) S.I. 1996/266, amended by S.I. 2011/1043, 2013/755; there are other amending instruments but none is relevant.
 - (d) S.I. 2005/2517; relevant amending instruments are S.I. 2006/2696, 2008/644, 2011/1043, 2013/755, 2691, 2014/2420, 2016/1167.

Article 2 (general interpretation)

3. In article 2—

- (a) in paragraph (1)—
 - (i) in the definition of “associated controlled dunnage”, for “12A or 13” substitute “12, 12A, 13 or 13C”;
 - (ii) omit the definition of “Decision (EU) 2015/2416(a)”;
 - (iii) after the definition of “ISPM No. 4” insert—

““ISPM No. 10” means International Standard for Phytosanitary Measures No. 10 of October 1999 on requirements for the establishment of pest free places of production and pest free production sites, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(b);”;
- (b) in paragraph (3A), after “18(1),” insert “18(3),”.

New article 42A

4. After article 42, insert—

“Power to share information for the purposes of the Order

42A.—(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose any information in their possession to the Commissioners for the purposes of this Order.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners for Her Majesty’s Revenue and Customs to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners for Her Majesty’s Revenue and Customs under paragraph (1) if—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure;
- (b) the disclosure is for a purpose other than specified in paragraph (1); and
- (c) the Commissioners for Her Majesty’s Revenue and Customs have not given their prior consent to the disclosure.”.

Article 43 (offences)

5. In Article 43(1)(a)—

- (a) at the end of paragraph (xiii), omit “and”;
- (b) after paragraph (xiv), insert—

“(xv) article 42A(3).”.

Article 44 (penalties)

6. For article 44 substitute—

“44.—(1) A person guilty of an offence under this Order (other than an offence under article 43(1)(a)(xv)) is liable—

- (a) on summary conviction in England, to a fine;

(a) OJ No L 333, 19.12.2015, p. 128.

(b) The latest published version is available from the IPPC Secretariat, Food and Agriculture Organization of the United Nations, AGDI, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/en/core-activities/standards-setting/ispm/>.

- (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale.
- (2) A person guilty of an offence under article 43(1)(a)(xv) is liable—
 - (a) on summary conviction in England, to imprisonment for a term not exceeding three months, to a fine or to both;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.”.

Schedule 1 (tree pests which shall not be landed in or spread within Great Britain)

7. In Schedule 1—

- (a) under the heading “Insects, mites and nematodes”, after item 7 insert—

“7A. *Saperda candida* Fabricius”;

- (b) under the heading “Viruses and virus-like organisms”, for “Elm phloem necrosis mycoplasma” substitute “*Candidatus Phytoplasma ulmi*”.

Schedule 1A (tree pests which shall not be landed in or spread within a protected zone which is limited in relation to England and Scotland to part of that area)

8. In Schedule 1A, in the second column of the table—

- (a) after “Epsom and Ewell,” insert “Guildford,”;
- (b) for “and West Berkshire” substitute “, West Berkshire and Woking”.

Schedule 2 (prohibitions on the landing in and movement within Great Britain of infected relevant material)

9. In Part B of Schedule 2, after item 4, insert—

“5.	England and Scotland	Trees, other than fruit or seeds, of <i>Pinus</i> L., intended for planting	<i>Thaumetopoea pityocampa</i> Denis & Schiffermüller
6.	England and Scotland	Trees, other than fruit or seeds, of <i>Ulmus</i> L., intended for planting	<i>Candidatus Phytoplasma ulmi</i> ”.

Schedule 4 (restrictions on the landing in and movement within Great Britain of relevant material)

10.—(1) In Part A of Schedule 4—

- (a) in item 8—
 - (i) in the entry in the second column of the table, for “12A or 13” substitute “12, 12A, 13 or 13C”;
 - (ii) in the entry in the third column of the table, in paragraph (a), after “be” insert “made of debarked wood and”;
- (b) in the entry in the third column of item 10A, for “as referred to in Article 1 of Decision (EU) 2015/2416” substitute “for the purposes of point 2.3 of Annex 4, Part A, Section 1 of the Directive”;
- (c) for the entry in the second column of item 12 substitute—

“Wood of *Platanus* L., other than in the form of:
—chips, particles, sawdust, shavings, wood waste or scrap,
or
—wood packaging material, except associated controlled dunnage,
but including wood which has not kept its natural round surface, originating in Armenia, Switzerland or the USA”;

(d) after item 13B insert—

“13C. Wood of *Amelanchier* Medik., *Aronia* Medik., *Cotoneaster* Medik., *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyracantha* M. Roem, *Pyrus* L. or *Sorbus* L., other than in the form of:
—chips, sawdust or shavings, obtained in whole or in part from these trees, or
—wood packaging material, except associated controlled dunnage,
but including wood which has not kept its natural round surface, originating in Canada or the USA

The wood must be accompanied by an official statement that:

- (a) it originates in an area free from *Saperda candida* Fabricius, established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4, and which is mentioned on the phytosanitary certificate or the phytosanitary certificate for re-export under the heading “Additional declaration”;
- (b) it has undergone an appropriate heat treatment to achieve a minimum temperature of 56°C for a minimum duration of 30 continuous minutes throughout the entire profile of the wood, and which is indicated on the phytosanitary certificate or the phytosanitary certificate for re-export; or
- (c) it has undergone appropriate ionising radiation to achieve a minimum absorbed dose of 1 kGy throughout the wood, and which is indicated on the phytosanitary certificate or the phytosanitary certificate for re-export”;

(e) after item 15 insert—

- “15A. Wood in the form of chips obtained in whole or in part from *Amelanchier* Medik., *Aronia* Medik., *Cotoneaster* Medik., *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyracantha* M. Roem, *Pyrus* L. or *Sorbus* L., originating in Canada or the USA
- The wood must be accompanied by an official statement that:
- (a) it originates in an area free from *Saperda candida* Fabricius, established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4, which is mentioned on the phytosanitary certificate or the phytosanitary certificate for re-export under the heading “Additional declaration”;
 - (b) it has been processed into pieces of not more than 2.5 cm thickness and width; or
 - (c) it has undergone an appropriate heat treatment to achieve a minimum temperature of 56°C for a minimum duration of 30 continuous minutes throughout the entire profile of the chips, and which is indicated on the phytosanitary certificate or the phytosanitary certificate for re-export”;
- (f) in the entry in the third column of item 17, for “as referred to in Article 1 of Decision (EU) 2015/2416” substitute “for the purposes of point 2.4 of Annex 4, Part A, Section 1 of the Directive”;
 - (g) in the entry in the third column of item 17A, for “as referred to in Article 1 of Decision (EU) 2015/2416” substitute “for the purposes of point 2.5 of Annex 4, Part A, Section 1 of the Directive”;
 - (h) in the entry in the third column of item 28, for “Elm phloem necrosis mycoplasma” substitute “*Candidatus Phytoplasma ulmi*”;
 - (i) after item 28, insert—

“28A. Trees, other than scions, cuttings, plants in tissue culture, pollen or seeds, of *Amelanchier* Medik., *Aronia* Medik., *Cotoneaster* Medik., *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyracantha* M. Roem., *Pyrus* L. or *Sorbus* L., intended for planting, originating in Canada or the USA

The trees must be accompanied by an official statement that:

- (a) they have been grown throughout their life in an area free from *Saperda candida* Fabricius, established by the national plant protection organisation in the country of origin in accordance with ISPM No. 4, and which is mentioned on the phytosanitary certificate or the phytosanitary certificate for re-export under the heading “Additional declaration”; or
- (b) they have been grown during a period of at least two years prior to export, or in the case of trees which are younger than two years, have been grown throughout their life, in a place of production established as free from *Saperda candida* Fabricius in accordance with ISPM No. 10:
 - (i) which is registered and supervised by the national plant protection organisation in the country of origin;
 - (ii) which has been subjected annually to two official inspections for any signs of *Saperda candida* Fabricius carried out at appropriate times;
 - (iii) where the trees have been grown in a site with complete physical protection against the introduction of *Saperda candida* Fabricius or with the application of appropriate preventive treatments and surrounded by a buffer zone with a width of at least 500 m in which the absence of *Saperda candida* Fabricius was confirmed by official surveys carried out annually at appropriate times; and
 - (iv) immediately prior to export, the trees, and in particular their stems, have been subjected to a meticulous inspection for their presence of *Saperda candida* Fabricius, which included destructive sampling, where appropriate”.

(2) In Part B of Schedule 4, after item 6 insert—

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| “6A. Trees, other than seeds, of
<i>Ulmus</i> L., intended for planting | The trees must be accompanied by an official statement that no symptoms of <i>Candidatus</i> <i>Phytoplasma ulmi</i> have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation”. |
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(3) In Part C of Schedule 4, after item 7C insert—

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| “7D. Trees, other than fruit or seeds,
of <i>Pinus</i> L., intended for
planting | <p>The trees must be accompanied by an official statement that:</p> <ul style="list-style-type: none">(a) they have been grown throughout their life in places of production in countries in which <i>Thaumatococcus panyocampa</i> Denis & Schiffermüller is not known to occur;(b) they have been grown throughout their life in an area free from <i>Thaumatococcus panyocampa</i> Denis & Schiffermüller, established by the national plant protection organisation in accordance with ISPM No. 4;(c) they have been produced in nurseries which, along with their vicinity, have been found free from <i>Thaumatococcus panyocampa</i> Denis & Schiffermüller on the basis of official inspections and official surveys carried out at appropriate times; or(d) they have been grown throughout their life in a site with complete physical protection against the introduction of <i>Thaumatococcus panyocampa</i> Denis & Schiffermüller and have been inspected at appropriate times and found to be free from that tree pest”. |
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Schedule 5 (relevant material from a third country for which a phytosanitary certificate may be required)

11. In Part A of Schedule 5, in paragraph 4(a)—

- (a) at the end of paragraph (vi), omit “or”;
- (b) at the end of paragraph (vii), omit “and”;
- (c) after paragraph (vii), insert—

“(viii) *Amelanchier* Medik., *Aronia* Medik., *Cotoneaster* Medik., *Crataegus* L., *Cydonia* Mill., *Malus* Mill., *Prunus* L., *Pyracantha* M. Roem., *Pyrus* L. or *Sorbus* L., including wood which has not kept its natural round surface, other than sawdust or shavings, originating in Canada or the USA; and”.

Schedule 6 (prohibitions on the landing in and movement within Great Britain of relevant material without a plant passport)

12.—(1) In Part A of Schedule 6, in paragraph 2, for “or *Tsuga* Carr.” substitute “*Quercus* L., *Tsuga* Carr. or *Ulmus* L.”.

(2) In Part B of Schedule 6, in paragraph 2B, for “or *Populus* L.” substitute “, *Populus* L., *Quercus* L., other than *Quercus* suber, or *Ulmus* L.”.

Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Union without a plant passport)

13.—(1) In Part A of Schedule 7, in paragraph 2, for “or *Tsuga* Carr.” substitute “*Quercus* L., *Tsuga* Carr. or *Ulmus* L.”.

(2) In Part B of Schedule 7, in paragraph 2B, for “or *Populus* L.” substitute “, *Populus* L., *Quercus* L., other than *Quercus* suber, or *Ulmus* L.”.

Schedule 8 (Swiss plant passports)

14.—(1) In Part A of Schedule 8, omit paragraph 1.

(2) In Part B of Schedule 8—

- (a) in paragraph 2, after “Canada,” insert “*Castanea* Mill.”;
- (b) after paragraph 2 insert—

“2A. Cut branches of—

- (a) *Betula* L., with or without foliage;
- (b) *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., with or without foliage, originating in Canada, China, Democratic People’s Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA.”.

(c) for paragraph 3 substitute—

“3. Wood referred to in paragraph (a) or (b) of the definition of “wood” in article 2(1), where it—

- (a) has been obtained in whole or in part from one of the following order, genera or species, except wood packaging material of a description specified in the second column of item 8 in Part A of Schedule 4—
 - (i) *Quercus* L., including wood which has not kept its natural round surface, originating in the USA, except wood in the form of casks, barrels, vats, tubs or other coopers’ products or parts thereof, including staves and where there is documented evidence that the wood has been processed or manufactured using a heat treatment to achieve a minimum temperature of 176°C for 20 minutes;
 - (ii) *Platanus* L., including wood which has not kept its natural round surface, originating in the USA or Armenia;
 - (iii) *Populus* L., including wood which has not kept its natural round surface, originating in any country of the American continent;
 - (iv) *Acer saccharum* Marsh., including wood which has not kept its natural round surface, originating in the USA or Canada;
 - (v) conifers (Coniferales), including wood which has not kept its natural round surface, originating in any country outside Europe, Kazakhstan, Russia or Turkey;
 - (vi) *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., including wood

which has not kept its natural round surface, originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA;

- (vii) *Betula* L., including wood which has not kept its natural round surface, originating in Canada or the USA; and
- (b) meets one of the descriptions specified in point 6(b) of Appendix 1 to Part B of Annex 4 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products(a).”;
- (d) for paragraph 6 substitute—
 - “6. Isolated bark of—
 - (a) conifers (Coniferales), originating in any country outside Europe;
 - (b) *Acer saccharum* Marsh., *Populus* L. or *Quercus* L., other than *Quercus suber* L.;
 - (c) *Fraxinus* L., *Juglans ailantifolia* Carr., *Juglans mandshurica* Maxim., *Ulmus davidiana* Planch. or *Pterocarya rhoifolia* Siebold & Zucc., originating in Canada, China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea, Russia, Taiwan or the USA;
 - (d) *Betula* L., originating in Canada or the USA.”.

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29th November 2017

Stephen Bennett
Secretary to the Forestry Commissioners

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”) in relation to England and Scotland to implement—

- (a) Decision No 1/2015 of the Joint Committee on Agriculture concerning the amendment to Appendices 1, 2 and 4 to Annex 4 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products (OJ No L 27, 1.2.2017, p. 155) (see article 14 of the Order);
- (b) Commission Implementing Decision (EU) 2017/204 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in the United States of America, and repealing Implementing Decision (EU) 2015/2416 recognising certain areas of the United States of America as being free from *Agrilus planipennis* Fairmaire (OJ No L 32, 7.2. 2017, p. 35) (see articles 3(a)(ii) and 10(1)(b), (f) and (g) of the Order);
- (a) Commission Implementing Directive (EU) 2017/1279 amending Annexes I to V to Council Directive 2000/29/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 (OJ No L 164, 15.7.2017, p. 33) (see articles 3(a)(i) and (iii) and 7 to 13 of the Order).

Article 3(b) of the Order makes a clarification to article 2(3A) of the principal Order.

(a) OJ No L 114, 30.4.2002, p. 132, as last amended by Decision No 1/2017 of the Joint Committee on Agriculture (OJ No L 171, 4.7.2017, p. 185).

Articles 4 to 6 provide for an information gateway between HMRC and the Forestry Commissioners for the purposes of the principal Order and for an offence (in relation to England and Scotland) for the wrongful disclosure of information.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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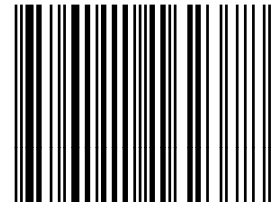
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