

2013 No. 2691

PLANT HEALTH, ENGLAND AND SCOTLAND

**The Plant Health (Forestry) (Amendment) (England and
Scotland) Order 2013**

<i>Made</i> - - - -	<i>16th October 2013</i>
<i>Laid before Parliament</i>	<i>21st October 2013</i>
<i>Coming into force</i> - -	<i>11th November 2013</i>

The Forestry Commissioners make this Order in exercise of the powers conferred by sections 2 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. It appears to the Forestry Commissioners that it is expedient for the references to the European Union instrument mentioned in article 3(a) to be construed as references to that instrument as amended from time to time.

Title, commencement and application

1. This Order—

- (a) may be cited as the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2013;
- (b) comes into force on 11th November 2013; and
- (c) applies in relation to England and Scotland only.

Amendment of the Plant Health (Forestry) Order 2005

- 2. The Plant Health (Forestry) Order 2005(c) is amended as follows.**

(a) 1967 c.8. Sections 2 and 3(1) were amended by the European Communities Act 1972 (c.68), Schedule 4, paragraph 8 and S.I. 2011/1043, article 6(1). Section 2(2) was amended by the Customs and Excise Management Act 1979 (c.2), Schedule 4, paragraph 12. Section 2(3) was inserted by S.I. 1990/2371, Schedule 1, paragraph 1. The powers conferred by sections 2 and 3 are conferred on a “competent authority”, which is defined in section 1(2). Section 1(2) was amended by article 4(1) of, and paragraph 43 of Schedule 2 to, the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755). Under section 1(2), as amended, the Forestry Commissioners are the competent authority for England and Scotland as regards the protection of forest trees and timber from attack by pests.

(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) S.I. 2005/2517; relevant amending instruments are S.I. 2006/2696, 2008/644, 2009/594, 2011/1043, 2012/2707, 2013/755.

Amendment of article 2 (general interpretation)

3. In article 2(1)(a)—

- (a) for the definition of “Decision 2008/840/EC”, substitute—
““Decision 2012/138/EU” means Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)(b), as amended from time to time;”;
- (b) after the definition of “official body of point of entry”, insert—
““official documentation” means documentation issued by or with the authority of the responsible official body of the member State in which the documentation is issued;”.

Amendment of article 8 (exceptions from certain prohibitions and requirements)

4. In article 8(2)(c)—

- (a) omit sub-paragraph (c);
- (b) for sub-paragraphs (d) and (e), substitute—
“(c) tree seedlings, other than seedlings of *Castanea* Mill., *Fraxinus* L. or *Platanus* L. or seedlings in bonsai form, not exceeding 5 in number; or
(d) pieces of wood, other than wood of *Platanus* L., which are bark-free, not exceeding 1 metre in length and not exceeding 5 in number”.

Amendment of article 20 (requirements for plant passports)

5. After article 20(7)(d), insert—

“(8) Subject to article 21, no person shall move within England or Scotland or consign from England or Scotland to another part of the European Union any relevant material of the following description unless it is accompanied by the appropriate documentation—

- (a) trees of *Castanea* Mill. intended for planting; or
- (b) trees, other than seeds, of *Platanus* L. intended for planting.

(9) In paragraph (8), “appropriate documentation” means—

- (a) in the case of trees of *Castanea* Mill. intended for planting, official documentation confirming that they have been grown throughout their life in a place of production in a country in which *Cryphonectria parasitica* (Murrill) Barr is known not to occur or an area established and maintained as an area free from *Cryphonectria parasitica* (Murrill) Barr in accordance with ISPM No 4;
- (b) in the case of trees, other than seeds, of *Platanus* L. intended for planting, official documentation confirming that they have been grown throughout their life in a place of production in a country in which *Ceratocystis fimbriata* f. spp. *platani* Walter is known not to occur or an area established and maintained as an area free from *Ceratocystis fimbriata* f. spp. *platani* Walter in accordance with ISPM No 4. ”.

Substitution of article 21 (exceptions from certain prohibitions and requirements)

6. For article 21(e), substitute—

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- (a) The definition of “Decision 2008/840/EC” was inserted by S.I. 2009/594, article 2(2)(b). There are other amendments to article 2(1), but none is relevant.
 - (b) OJ No L 64, 3.3.2012, p.38.
 - (c) Article 8(2) was amended by S.I. 2012/2707, article 2(3).
 - (d) Article 20(7) was amended by S.I. 2013/755, Schedule 4, paragraph 223.
 - (e) Article 21 was amended by S.I. 2012/2707, article 2(4).

“21.—(1) The following prohibitions and requirements shall not apply to small quantities of the following relevant material where it meets the conditions in article 21(2)—

- (a) in the case of relevant material, other than trees of *Castanea* Mill., *Fraxinus* L. or *Platanus* L. intended for planting—
 - (i) the prohibitions on landing in article 18(1)(e), (f) and (g); and
 - (ii) the requirements in article 20(1), (2), (5) and (6);
 - (b) in the case of trees of *Castanea* Mill. intended for planting—
 - (i) the prohibitions on landing in article 18(1)(e), other than the prohibition on the landing of trees of *Castanea* Mill. intended for planting unless the requirements in column 3 of item 24 of Part A of Schedule 4 have been complied with;
 - (ii) the prohibitions on landing in article 18(1)(f), other than the prohibition on the landing of trees of *Castanea* Mill. intended for planting unless the requirements in column 3 of item 5 of Part B of Schedule 4 have been complied with; and
 - (iii) the requirements in article 20(1) and (5);
 - (c) in the case of trees of *Castanea* Mill. intended for planting which originate in Great Britain and have remained in Great Britain throughout their life, the requirement in article 20(8)(a);
 - (d) in the case of trees of *Platanus* L. intended for planting—
 - (i) the prohibitions on landing in article 18(1)(e), other than the prohibition on the landing of trees, other than seeds, of *Platanus* L. intended for planting unless the requirements in column 3 of item 25 of Part A of Schedule 4 have been complied with;
 - (ii) the prohibitions on landing in article 18(1)(f), other than the prohibition on the landing of trees, other than seeds, of *Platanus* L. intended for planting unless the requirements in column 3 of item 6 of Part B of Schedule 4 have been complied with; and
 - (iii) the requirements in article 20(1) and (5); or
 - (e) in the case of plants of *Platanus* L. intended for planting which originate in Great Britain and have remained in Great Britain throughout their life, the requirement in article 20(8)(b).
- (2) The conditions are that the relevant material—
- (a) does not show any signs of the presence of a plant pest;
 - (b) is not intended for use in the course of a trade or business; and
 - (c) is intended for household use.”.

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

7. 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(a), for item 11, substitute—

“11. Trees of <i>Castanea</i> Mill. intended for planting or trees, other than seeds, of <i>Quercus</i> L. intended for planting	<i>Cryphonectria parasitica</i> (Murrill) Barr, the cause of Sweet Chestnut Blight”.
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(a) There are amendments to Part A of Schedule 2, but none is relevant.

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

8.—(1) 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)—

(a) for item 12, substitute—

“12. Wood of <i>Platanus</i> L., including wood which has not kept its natural round surface, which originates in any third country	(a) The wood shall be accompanied by a phytosanitary certificate or a phytosanitary certificate for re-export which includes under the heading “Additional declaration” an official statement that it originates in: (i) a place of production in a country in which <i>Ceratocystis fimbriata</i> f. spp. <i>platani</i> Walter is known not to occur; or (ii) an area established and maintained as an area free from <i>Ceratocystis fimbriata</i> f. spp. <i>platani</i> Walter in accordance with ISPM No 4; or (b) there shall be evidence by a mark “kiln-dried” or “KD” or another internationally recognized mark, put on the wood or its packaging in accordance with current commercial usage, that the wood has undergone kiln-drying to below 20% moisture content, expressed as a percentage of dry matter, achieved through an appropriate time/temperature schedule”;
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(b) in the second column of item 14 of the table, omit “—*Platanus* L., originating in the USA or Armenia,”;

(c) in the third column of item 22 of the table, for “24”, substitute “24A”;

(d) in the third column of item 23 of the table, after “24,”, insert “24A, 24B,”;

(e) for item 24, substitute—

“24. Trees of <i>Castanea</i> Mill. intended for planting, which originate in any third country	Without prejudice to the requirements in items 23, 24B, 31 and 32, the trees shall be accompanied by a phytosanitary certificate or a phytosanitary certificate for re-export which includes under the heading “Additional declaration” an official statement that they have been grown throughout their life in: (a) a place of production in a country in which <i>Cryphonectria parasitica</i> (Murrill) Barr is known not to occur; or (b) an area established and maintained as an area free from <i>Cryphonectria parasitica</i> (Murrill) Barr in accordance with ISPM No 4
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(a) Item 24 was amended by S.I. 2006/2696, article 2(7)(a). Item 24a was inserted by S.I. 2006/2696, article 2(7)(b). Item 33 was inserted by S.I. 2009/594, article 2(5)(g). There are other amendments to Part A of Schedule 4, but none is relevant.

- 24A. Trees, other than seeds, of *Quercus* L. intended for planting, which originate in any third country
- Without prejudice to the requirements in items 22, 23, 31 and 32, the trees shall be accompanied by an official statement that:
- (a) they originate in an area known to be free from *Cryphonectria parasitica* (Murrill) Barr; or
- (b) no symptoms of *Cryphonectria parasitica* (Murrill) Barr have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation”;
- (f) renumber item 24a as item 24B;
- (g) for item 25, substitute—
- “25. Trees, other than seeds, of *Platanus* L. intended for planting, which originate in any third country
- Without prejudice to the requirements in items 31, 33 and 34, the trees shall be accompanied by a phytosanitary certificate or a phytosanitary certificate for re-export which includes under the heading “Additional declaration” an official statement that they have been grown throughout their life in:
- (a) a place of production in a country in which *Ceratocystis fimbriata* f. spp. *platani* Walter is known not to occur; or
- (b) an area established and maintained as an area free from *Ceratocystis fimbriata* f. spp. *platani* Walter in accordance with ISPM No 4 ”;
- (h) for item 33, substitute—
- “33. Trees of specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in China
- Without prejudice to the requirements in items 25 to 29, 31 and 32:
- (a) the trees shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with point 1 of Section 1(B) of Annex I to Decision 2012/138/EU; and
- (b) the place of production of the trees shall meet the requirements specified in Article 3(1)(c) of Decision 2012/138/EU
34. Trees of specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in any third country where *Anoplophora chinensis* (Forster) is known to be present, other than China
- Without prejudice to the requirements in items 25 to 29, 31 and 32, the trees shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with point 1 of Section 1(A) of Annex I to Decision 2012/138/EU”.

(2) 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(a)—

(a) for item 5, substitute—

“15. Trees of *Castanea* Mill. intended for planting

Without prejudice to the requirements in item 5B, the trees shall be accompanied by official documentation confirming that they have been grown throughout their life in:

(a) a place of production in a country in which *Cryphonectria parasitica* (Murrill) Barr is known not to occur; or

(b) an area established and maintained as an area free from *Cryphonectria parasitica* (Murrill) Barr in accordance with ISPM No 4

5A. Trees, other than seeds, of *Quercus* L. intended for planting

Without prejudice to the requirements in items 5C and 5D, the trees shall be accompanied by an official statement that:

(a) they originate in an area known to be free from *Cryphonectria parasitica* (Murrill) Barr; or

(b) no symptoms of *Cryphonectria parasitica* (Murrill) Barr have been observed at the place of production or in its immediate vicinity since the beginning of the last complete cycle of vegetation”;

(b) renumber items 5a, 5b and 5c as, respectively, items 5B, 5C and 5D;

(c) for item 6, substitute—

“6. Trees, other than seeds, of *Platanus* L. intended for planting

Without prejudice to items 8 and 8A, the trees shall be accompanied by official documentation confirming that they have been grown throughout their life in:

(a) a place of production in a country in which *Ceratocystis fimbriata* f. spp. *platani* Walter is known not to occur; or

(b) an area established and maintained as an area free from *Ceratocystis fimbriata* f. spp. *platani* Walter in accordance with ISPM No 4”;

(d) for item 8, substitute—

“8. Trees of specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in an area established in accordance with Article 6

Without prejudice to the requirements in items 4, 6 and 7, the trees shall be accompanied by an official statement that they meet the requirements

(a) Part B was amended by S.I. 2011/1043, article 4(1). Item 5 was amended by S.I. 2006/2696, article 2(8)(a). Item 5a was inserted by S.I. 2006/2696, article 2(8)(b). Item 5b was inserted by S.I. 2008/644, article 2(5)(b) and amended by S.I. 2009/594, article 2(6)(a). Item 5c was inserted by S.I. 2009/594, article 2(6)(b). Item 8 was inserted by S.I. 2009/594, article 2(6)(c). There are other amendments to Part B of Schedule 4, but none is relevant.

	of that Decision	specified in point 1 of Section 2 of Annex I to Decision 2012/138/EU
8A.	Trees of specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which do not originate in, but have been introduced into, a place of production that is in an area established in accordance with Article 6 of that Decision	Without prejudice to the requirements in items 4, 6 and 7, the trees shall be accompanied by an official statement that the place of production into which they have been introduced meets the requirements specified in point 1(iii) of Section 2 of Annex I to Decision 2012/138/EU”.

Amendment of Schedule 5 (relevant material from a third country for which a phytosanitary certificate may be required)

9. In Part A (relevant material which may only be landed in Great Britain if accompanied by a phytosanitary certificate) of Schedule 5(a)—

- (a) after paragraph 2, insert—
 - “2A. Seeds of *Castanea* Mill. intended for planting.”;
- (b) in paragraph 4(a)(ii), omit “, originating in the USA or Armenia”.

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

10. 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(b), for paragraph 4a, substitute—

“4A. Trees of specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in any third country where *Anoplophora chinensis* (Forster) is known to be present or which originate in or have been introduced into an area established in accordance with Article 6 of that Decision.”.

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

11. 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(c), for paragraph 4a, substitute—

“4A. Trees of specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in any third country where *Anoplophora chinensis* (Forster) is known to be present or which originate in or have been introduced into an area established in accordance with Article 6 of that Decision.”.

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(a) Paragraph 4 was amended by S.I. 2009/594, article 2(7)(b). There are other amendments to Part A of Schedule 5, but none is relevant.

(b) Schedule 6 was amended by S.I. 2011/1043, article 4(1). Item 4a was inserted by S.I. 2009/594, article 2(8). There are other amendments to Part A of Schedule 6, but none is relevant.

(c) Schedule 7 was amended by S.I. 2011/1043, article 4(1). Item 4a was inserted by S.I. 2009/594, article 2(8). There are other amendments to Part A of Schedule 7, but none is relevant.

16th October 2013

Wilma Harper
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) in relation to England and Scotland (“the relevant territory”).

Articles 4 to 7, 8(1)(a) to (g), 8(2)(a) to (c) and 9 amend the existing control measures to prevent the introduction and spread of *Ceratocystis fimbriata* f. spp. *platani* Walter (a cause of plane canker stain) and *Cryphonectria parasitica* (Murrill) Barr (a cause of sweet chestnut blight). The revised control measures in relation to *Ceratocystis fimbriata* f. spp. *platani* Walter apply to the landing in and the movement within the relevant territory, and the consignment from the relevant territory to another part of the European Union, of trees, other than seeds, of *Platanus* L. intended for planting. They also apply to the introduction of wood of *Platanus* L. originating outside the European Union. The revised control measures in relation to *Cryphonectria parasitica* (Murrill) Barr apply to the landing in and the movement within the relevant territory, and the consignment from the relevant territory to another part of the European Union, of trees of *Castanea* Mill. intended for planting.

In addition, articles 8(1)(h), 8(2)(d), 10 and 11 implement in relation to the relevant territory the specific control measures in Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster) (OJ No L 64, 3.3.2012, p. 38), which replaced Commission Decision 2008/840/EC (OJ No L 300, 11.11.2008, p. 36).

Article 3(a) provides for the references in the Plant Health (Forestry) Order 2005 to Commission Implementing Decision 2012/138/EU to be read as references to that Decision as amended from time to time.

An impact assessment has not been produced in relation to Commission Implementing Decision 2012/138/EU or the revised control measures applying to wood of *Platanus* L. as no impact on business or the private or voluntary sector is foreseen from these measures. Validation impact assessments of the effect that the other measures will have on the costs to business, the voluntary sector and the public sector in England are available from the Department for Environment, Food and Rural Affairs, Plant Health Policy Team, Sand Hutton, York YO41 1LX. They are also published with the Explanatory Memorandum for this instrument. The Explanatory Memorandum is available alongside the instrument at www.legislation.gov.uk.