

**EXPLANATORY MEMORANDUM TO THE
PLANT HEALTH (FORESTRY) ORDER 2005**

2005 No. 2517

1. This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1. The Order sets in place measures to prevent the introduction and spread of harmful forestry pests and diseases in Great Britain and to assist in preventing their introduction and spread elsewhere in the European Union. It revokes and consolidates previous regulation, notably the Plant Health (Forestry) (Great Britain) Order 1993 and its various amendments.
 - 2.2. It implements a suite of European Directives and Council Decisions that amend several aspects of the plant protection regime in the Community. The most important in respect of forestry pests and diseases
 - clarify arrangements for point-of-entry inspections of certain materials from non-EU countries;
 - amend the requirements that must be met before certain plants and plant products (including wood) can be landed in the country;
 - permit, under certain safeguards, phytosanitary inspections to be carried out at places other than the point of entry into the country;
 - revoke the status for Great Britain as a “protected zone” against the insect *Dendroctonus micans* (the Great Spruce Bark Beetle) and the associated Treatment of Spruce Bark Order 1993 and its two amendments; and
 - establish Great Britain as a protected zone against the fungal pathogen *Cryphonectria parasitica* (the cause of Sweet Chestnut Blight)
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The Plant Health (Forestry) (Great Britain) Order 1993 has been amended 9 times in response to changes in EU legislation. A further suite of amending Directives and Decisions requires transposition. Together with the other Plant Health authorities in the UK, the Forestry Commission decided that another round of amendments would introduce further difficulty in comprehending already complicated legislation. The Order represents a consolidation of existing requirements under the relevant EU measures.

- 4.2 The Order concerns only those EU legislative measures that are relevant to forestry pests and diseases in Great Britain. It is part of a group of consolidated Orders that will form the phytosanitary regime across the UK.
- 4.3 Council Directive 2000/29/EC (“the Plant Health Directive”) establishes the Community plant health regime as “protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community”. Its articles prescribe the inspections and controls that Member States must put in place. Its annexes describe the pests that are of concern, the materials that may harbour them and the measures that must be applied to those materials before they may enter the Community – the measures extend to a complete prohibition on entry.
- 4.4 The annexes of the Directive have been amended many times as a result of technical changes in the assessment of risks presented by different pests. They have also been amended to eliminate errors and inconsistencies.
- 4.5 The main text of the Directive (i.e. the articles) has also been amended in relation to provisions for inspections and certain definitions.
- 4.6 All the provisions in the Order have already been adopted administratively by the Forestry Commission. This was done in consultation with the sectors affected and in order to harmonise our controls on wood and wood products elsewhere in the Community. The Order represents a legislative catching-up exercise and its passage will have no further impact on business.
- 4.7 A transposition table is attached.

5. Extent

- 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

- 7.1 There is a high, and often realised, potential for substantial damage to crops and natural ecosystems from artificial movement of pests and diseases from one geographic area to another. The major pathway for such movement is traded goods. Islands, which often have unique ecosystems or which may be naturally isolated from continental pests, can be especially vulnerable newly introduced pests.

- 7.2 Plant Health regulation traditionally seeks to reduce the risks by placing restrictions on the movement of people and goods that may introduce disease. However, the impacts on free trade and businesses have also to be taken into account. The basis of regulation is negotiated agreement based on risk assessment reached between countries through such international bodies as the International Plant Protection Convention and the World Trade Organisation (WTO).
- 7.3 Within the EU, the single market agreement means that, in addition to agreements with the WTO, there is a presumption against interfering with the movement of goods other than where there are high risks attached. The compromises reached among Member states and between the EU and other countries are built into the Plant Health Directive.
- 7.4 The Directive has few restrictions on internal movement but imposes obligations on suppliers to check for the health of plants and plant products and, where required, to give them a “plant passport”. This is linked to an inspection regime and recognises certain “protected zones” within Europe where particular European pests are not present and to which some kinds of material cannot be moved.
- 7.5 There are more restrictions on the import of material from countries outside the Community. These range from an obligation to produce documentary evidence of origin, to requirements for certain kinds of treatment before entry to outright prohibition.
- 7.6 The Directive covers all the accepted high-risk pests and has considerable detail in its Annexes about the requirements associated with each. Constant amendment is required as
- research and experience change our perception of the risks;
 - advances in technology allow new methods of controlling risks;
 - new plant commodities presenting new risks come into international trade, or
 - protracted negotiations between countries reach resolution
- 7.7 Commercial forestry in the UK is still largely dependent on exotic tree species that have remained free of some devastating pests that afflict them in their native conditions. Introduction of such pests would pose a serious threat of loss of production in an industry that is small in terms of GDP but a significant source of rural employment. Some pests that could establish themselves on exotic species would then pose a serious threat to native timber-producing trees. UK regulation against forestry pests also has a role in protecting forests in other Member States.
- 7.8 Damage to semi-natural woodland ecosystems or ornamental trees by non-indigenous pests are of as great or higher political concern than loss of commercial production. Such pests can gain a high public and media profile - Dutch elm disease being the obvious example.

- 7.9 The UK imports over 80% of its timber requirements representing a major potential pathway for the introduction of forestry pests to the UK and to Europe. Wood is also the material of choice for a huge amount of packaging material in international trade. Without regulation, this too would constitute a major route for introduction and spread.
- 7.10 The UK has taken a leading role in shaping the evolution of international plant health regulation at all levels. This has particularly been the case with wood and wood products which form a substantial element of European concern about the introduction of foreign pests and which are also a major factor in international trade. The UK has pioneered agreements with the trade to adopt treatment methods, standards and declarations that reduce both the risks posed by wood and the burden of regulation on business. This has, for example, permitted the EU to bring wood packaging, long a bone of contention, within the scope of regulation.
- 7.11 Improvements to the EU regulatory regime and their transposition into domestic regulation have been frequent in the last 10 years. The magnitude of change is such that tinkering with existing Orders is no longer the most effective means of regulation. We have also to take into account changes across the EU in the operational methods of Customs authorities, which have overall control of entry of goods into the European Customs Area. To reflect these changes a completely new set of Orders is desirable.
- 7.12 Although plant health regulation and forestry are devolved issues, the Forestry Commissioners remain by statute a body with responsibilities in England, Scotland and Wales. Forestry Ministers in all 3 countries have agreed that this Order should rest with the Commissioners and have GB force.

8. Impact

- 8.1 Note para 4.6. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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TRANSPOSITION NOTE

PLANT HEALTH (FORESTRY) ORDER 2005

This transposition note shows how the main elements of the following Community instruments have been implemented by the Plant Health (Forestry) Order 2005.

These regulations do what is necessary to implement the following Community instruments, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

(1) Commission Directive 2002/36/EC

Article of Directive	Purpose	Implementation
1 and Annex , point 1	Amendment of the list of tree pests (insects) which are prohibited	Schedule 1, item 2
1 and Annex, point 9	Amendment to the list of countries in Annex IV of Directive 2000/29 from which soil and growing medium attached to plants is controlled	Schedule 4, item 30
1 and Annex, point 30	Amendment to the list of countries in Annex VB of Directive 2000/29 from which a phytosanitary certificate is required for soil and growing medium entering the Community	Schedule 5, Part A, item 6

(2) Council Directive 2002/89/EC

Article of Directive	Purpose	Implementation
1(2)	Amendment to the definition of 'plant'	Article 2(1)
1(8) – adds Article 13(1) and (2) to Directive 2000/29	Inspection of material landed in the Community from third countries where that material is listed in Annex VB. Inspection to take place before the material is placed under certain customs procedures under the Community Customs Code	Article 10 and provisions to which it refers
1(8) – adds Article 13(3) to Directive 2000/29	Member States to ensure they can inspect material	Article 13

	landed in the Community from third countries where that material is not listed in Annex VB (including dunnage, spacers, pallets or packaging material, actually in use in the transport of any cargo),	
1(8) – adds Article 13a(1) to Directive 2000/29	Mechanics of the inspections in Article 13(1) – what has to be inspected and the types of inspection, documentary, identity and plant health	Article 12(2)(g) documentary checks, article 12 (4) identity checks and article 12(3) plant health checks
1(8) – adds Article 13a(3) to Directive 2000/29	Requirements regarding details to be included on phytosanitary certificates and who may issue such certificates	Article 15(3)(a) and (d) and definition of ‘national plant protection organisation’
1(8) – adds Article 13a(4) to Directive 2000/29	Requirement for the landing conditions in Annex IV which have been complied with to be endorsed on an accompanying phytosanitary certificate (where more than one alternative landing condition applies)	Article 15(4)
1(8) – adds Article 13b(1) to Directive 2000/29	Member State to ensure where they suspect material has not been declared to be Annex VB material (and so falling under the inspection requirements of Article 13(1)) such material should be inspected	Article 13
1(8) – adds Article 13b(2)(3) to Directive 2000/29	Sets out circumstances in which the inspection requirements in Article 13(1) do not apply	Article 11
1(8) – adds Article 13c(1)(b) to Directive 2000/29	Clarification of the requirement for importers of material listed in Annex VB to be registered	Article 25(1) and definition of ‘forestry trader’ in article 2(1)
1(8) – adds Article 13c(1)(c)(i) to Directive 2000/29	Requirement that importers of material listed in Annex VB which is required to be inspected, refer to specified details on customs documents which relate to	Article 9(2)

	that material	
1(8) – adds Article 13c(1)(c)(ii) to Directive 2000/29	Requirement to notify Member State authorities of advance notification of material required to be inspected	Article 6
1(8) – adds Article 13c(2)(b) and (c) to Directive 2000/29	In the case of material landed in a Member State from a third country, identity and plant health checks may be performed in that Member State at the point of entry, the place close to the point of entry or an approved place of inspection	Article 10(1) and (2) and article 17
1(8) – adds Article 13c(2)(e) to Directive 2000/29/EC	Requirement for minimum conditions at the place where inspection is to be performed and guarantees in respect of movement of consignments to those places	Article 12

(3) Commission Directive 2003/47/EC

Article of Directive	Purpose	Implementation
1 and Annex, point 2	Amendment to the list of countries in Annex IV of Directive 2000/29 – referred to in relation to landing requirements for growing medium and soil entering the Community	Schedule 4, Part A, item 30
1 and Annex, point 3(b)	Amendment to the list of countries in Annex VB of Directive 2000/29 – from which a phytosanitary certificate is required for soil and growing medium entering the Community	Schedule 5, Part A, item 6

(4) Article 20 and Annex II of the Act concerning the Conditions of Accession

Article	Purpose	Implementation
Act, Annex II, Part 6 (Agriculture), Section B (Veterinary and Phytosanitary Legislation), Sub-section II (Phytosanitary Legislation)		
Item 5(j)	Amendment to the list of countries in Annex III of	Schedule 3, item 8

	Directive 2000/29 from which soil and growing medium is prohibited	
Item 5(l) and (m)	Amendment to the list of countries in Annex IV of Directive 2000/29 – referred to in relation to landing requirements for growing medium and soil entering the Community	Schedule 4, Part A, item 30
Item 5(t)	Amendment to the list of countries in Annex VB of Directive 2000/29 from which a phytosanitary certificate is required for soil and growing medium entering the Community	Schedule 5, Part A, item 6

(5) Commission Decision 2004/278/EC

Article of Decision	Purpose	Implementation
Annex, Appendix 1	List of species which are subject to special trade arrangements under the EC-Swiss Confederation Trade Agreement	Article 29 and Schedule 8

(6) Commission Directive 2004/102/EC

Article of Directive	Purpose	Implementation
Article 1 and Annex, point 1	Amends the scientific name of and the list of countries affected by Sapstreak of maple from where relevant material is prohibited if infected	Article 5(1)(b) and Schedule 2, Part A, item 7
Article 1 and Annex, point 2	Amendment to the description of relevant material which is host to Sweet Chestnut Blight the landing of which is prohibited if infected	Article 5(1)(b) and Schedule 2, Part A, item 11
Article 1 and Annex, point 3	Lists the protected zones for Sweet Chestnut Blight into which relevant material is prohibited if infected	Article 5(1)(b) and Schedule 2, Part B, item 3
Article 1 and Annex, point 4	Removal of prohibition on import of isolated bark of conifers	The prohibition in the 1993 Order has not been included in this Order

Article 1 and Annex, point 5	Amendment to the description of relevant material (coniferous wood), the third countries of origin (the wood from which must meet the specified landing requirements), and the landing requirements to be met	Articles 5(1)(e), 18(1)(e) and Schedule 4, Part A, items 1, 2, 3, 4, 5, 6, 7, and 8
Article 1 and Annex, points 6, 14, 15, 19	Addition of landing requirements for certain material	Articles 5(1)(e), 18(1)(e) and Schedule 4, Part A, items 8, 16, 17 Articles 5(1)(f), 18(1)(g) and Schedule 4, Part C, item 4
Article 1 and Annex, points 7, 8, 9, 11, 12, 13, 16, 17	Amendment of the landing requirements for certain material	Articles 5(1)(e), 18(1)(e) and Schedule 4, Part A, items 9, 10, 11, 12, 13, 14, 15, 22, 23, 25
Article 1 and Annex, points 10 and 18	Removal of previous landing requirements for wood and isolated bark of <i>Castanea</i>	The landing requirements in the 1993 Order have not been included in this Order
Article 1 and Annex, point 21	Amends the description of the special requirements in respect of isolated bark of conifers in respect of the pests <i>Ips amitinus</i> , <i>I. cembrae</i> , <i>I. duplicatus</i> , <i>I. sexdentatus</i> and <i>I. typographus</i> when landed in or moved within a protected zone	Articles 5(1)(f), 18(1)(g) and Schedule 4, Part C, items 8, 9 and 10. The points concerning <i>Ips cembrae</i> and <i>I. sexdentatus</i> do not apply in Great Britain and have not been included in this Part of the Order
Article 1 and Annex, point 22	Adds new landing requirements in respect of isolated bark of <i>Castanea</i> when landed in or moved within the protected zone in Great Britain	Articles 5(1)(f), 18(1)(g) and Schedule 4, Part C, item 11
Article 1 and Annex, point 23	Amends the description of wood of <i>Platanus</i> which must have a plant passport and deletes the previous requirement in respect of wood of <i>Castanea</i>	Article 20(1) and Schedule 6, Part A, item 1, in respect of wood of <i>Platanus</i> . The requirements for wood of <i>Castanea</i> in the 1993 Order have not been included in this Part of the Order
Article 1 and Annex, point 24	Amends the description of wood of conifers, and adds wood and isolated bark of	Article 20(2) and Schedule 6, Part B items 3 and 4

	<i>Castanea</i> , to the description of relevant material which must have a plant passport when landed in or moved within the protected zone in Great Britain	
Article 1 and Annex, points 25, 26, 27	Amendments to the list of countries from which imports of certain material are required to be accompanied by a phytosanitary certificate	Article 7(1) and Schedule 5, Part A, items 2(c), 3(a) and 4
Article 1 and Annex, point 28	Amends the description of wood of conifers, and adds wood of <i>Castanea</i> , as described, which must be accompanied by a phytosanitary certificate when landed in the protected zone in Great Britain	Article 7(1) and Schedule 5, Part B, item 1
Article 1 and Annex, point 29	Adds isolated bark of <i>Castanea</i> to the description of relevant material which must be accompanied by a phytosanitary certificate when landed in the protected zone in Great Britain	Article 7(1) and Schedule 5, Part B, item 3

(7) Commission Directive 2004/103/EC

Article of Directive	Purpose	Implementation
1(1) and (2)	Permits material which is required to be inspected under Art 13(1) of Directive 2000/29, to be inspected at an approved place of inspection. An approved place of inspection in the case of material consigned directly from a third country to GB is the point of entry or a place close by, and in the case of material which comes from a third country via another Member State an approved place of inspection shall be a place within GB.	Art 10(1) and (2)(c) and 16(1)

1(3)	Requirements to be met when material is transported to an approved place of inspection to be inspected at that place	Article 16(2) and Schedule 13
2	Sets an approval procedure – for applications to be made for a place to be an approved place of inspection and how approvals should be granted	Article 17
3	Requirement for an importer to give advance notification when he wishes an inspection of material to be performed at an approved place of inspection	Article 16(3)

(8) Commission Directive 2004/105/EC

Article of Directive	Purpose	Implementation
2 and Annex II	Member States required to accept until 31 st December 2009 phytosanitary certificates and phytosanitary certificates for re-export in the format set out in the International Plant Protection Convention (IPPC) currently in force	Article 15(1)(a)(ii) and Schedule 10
1 and Annex I	Member States must accept phytosanitary certificates and phytosanitary certificates for re-export issued by contracting parties to the IPPC either in the format set out in the in the current IPPC or in the amendments set out in the 1997 text yet to come into force	Article 15(1)(a)(i) and Schedules 10 and 11

(9) Council Directive 2005/15/EC

Article of Directive	Purpose	Implementation
1(1)	Suspension of the requirement for wood packaging material actually in use in the transport of	Schedule 4, Part A, item 8

	objects of any kind to be debarked (requirement imposed by Directive 2004/102)	
1(2)	Suspension of the requirement for dunnage to be debarked (requirement imposed by Directive 2004/102)	Schedule 4, Part A, item 17

(10) Commission Directive 2005/16/EC

Article of Directive	Purpose	Implementation
1 and Annex	Removal of the <i>Dendroctonus micans</i> protected zone in respect of Great Britain	The <i>Dendroctonus micans</i> protected zone relating to Great Britain which was present in the 1993 Order is not included in this Order

(11) Commission Directive 2005/17/EC

Article of Directive	Purpose	Implementation
Article 1(3)	Permits the title 'EEC-plant passport' on a plant passport until 31 st December 2005, and from that date requires the wording 'EC-plant passport' to be used	Schedule 9, item 7(a)

(12) Commission Directive 2005/18/EC

Article of Directive	Purpose	Implementation
1(2) and Annex	Creation of a protected zone for certain parts of the Community (including Great Britain) for <i>Cryphonectria parasitica</i>	Schedule 2, Part B, item 3 Schedule 4, Part C, items 4 and 11

(13) Commission Decision 2005/260/EC

Article of Decision	Purpose	Implementation
1 and Appendix 1 annexed to Decision	Amend the list of species which are subject to special trade arrangements under the EC-Swiss Confederation Trade Agreement	Article 29 and Schedule 8