STATUTORY INSTRUMENTS

# 2017 No. 1178

# PLANT HEALTH, ENGLAND
# PLANT HEALTH, SCOTLAND

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

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| *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(**1**);

(b) so far as relating to the remaining articles, sections 2 and 3(1) of the Plant Health Act 1967(**2**).

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(**3**).

PROSPECTIVE

**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.

(**1**) 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).

(**2**) 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.

(**3**) S.I. 1996/266, amended by S.I. 2011/1043, 2013/755; there are other amending instruments but none is relevant.

**Commencement Information**
**I1** Art. 1 in force at 1.1.2018, see **art. 1(1)**

### Amendment of the Plant Health (Forestry) Order 2005

**2.** The Plant Health (Forestry) Order 2005(**4**) is amended as follows.

**Commencement Information**
**I2** Art. 2 in force at 1.1.2018, see **art. 1(1)**

### 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(**5**)";

(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(**6**);";

(b) in paragraph (3A), after "18(1)," insert "18(3),".

**Commencement Information**
**I3** Art. 3 in force at 1.1.2018, see **art. 1(1)**

### 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.

(**4**) S.I. 2005/2517; relevant amending instruments are S.I. 2006/2696, 2008/644, 2011/1043, 2013/755, 2691, 2014/2420, 2016/1167.
(**5**) OJ No L 333, 19.12.2015, p. 128.
(**6**) 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/ispms/.

(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.".

**Commencement Information**
**I4** Art. 4 in force at 1.1.2018, see **art. 1(1)**

### 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).".

**Commencement Information**
**I5** Art. 5 in force at 1.1.2018, see **art. 1(1)**

### 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;

(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.".

**Commencement Information**
**I6** Art. 6 in force at 1.1.2018, see **art. 1(1)**

### 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—

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| "7A. | *Saperda candida* Fabricius"; |

(b) under the heading "Viruses and virus-like organisms", for "Elm phlöem necrosis mycoplasm" substitute "*Candidatus* Phytoplasma ulmi".

**Commencement Information**
**I7** Art. 7 in force at 1.1.2018, see **art. 1(1)**

**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".

**Commencement Information**
**I8** Art. 8 in force at 1.1.2018, see **art. 1(1)**

**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—

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| "5. | England and Scotland | Trees, other than fruit or seeds, of *Pinus* L., intended for planting | *Thaumetopoea pityocampa* Denis & Schiffermüller |
| 6. | England and Scotland | Trees, other than fruit or seeds, of *Ulmus* L., intended for planting | *Candidatus* Phytoplasma ulmi". |

**Commencement Information**
**I9** Art. 9 in force at 1.1.2018, see **art. 1(1)**

**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—

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

(d) after item 13B insert—

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| "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:<br><br>—chips, sawdust or shavings, obtained in whole or in part from these trees, or<br><br>—wood packaging material, except associated controlled dunnage,<br><br>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:<br>(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";<br>(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<br>(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—

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| "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 | The wood must be accompanied by an official statement that:<br>(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 |