Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 1167

PLANT HEALTH, ENGLAND
PLANT HEALTH, SCOTLAND

The Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016

Made - - - -	*30th November 2016*
Laid before Parliament	*5th December 2016*
Coming into force - -	*1st January 2017*

The Forestry Commissioners make this Order in exercise of the powers conferred by sections 2 and 3(1) of the Plant Health Act 1967 [F1] and paragraph 1A of Schedule 2 to the European Communities Act 1972 [F2].

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 [F3]. It appears to the Forestry Commissioners that it is expedient for the references to the European Union instruments mentioned in article 3(1) to be construed as references to those instruments as amended from time to time.

F1 1967 c.8. Section 2 was amended by the European Communities Act 1972 (c.68), **Schedule 4**, paragraph 8(2)(a), the Customs and Excise Management Act 1979 (c.2), **Schedule 4**, paragraph 12 and S.I. 1990/2371 and 2011/1043. Section 3(1) was amended by the European Communities Act 1972, Schedule 4, paragraph 8(2)(a) and (b) and S.I. 2011/1043. The powers conferred by sections 2 and 3 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.

F2 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7) and S.I. 2007/1388.

F3 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).

Citation, commencement and application

1. This Order—

(a) may be cited as the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016;

(b) comes into force on 1st January 2017; 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 [F4] is amended as follows.

F4 S.I. 2005/2517; relevant amending instruments are S.I. 2006/2696, 2008/644, 2009/594, 3020, 2011/1043, 2012/2707, 2013/755, 2691, 2014/2420.

Article 2 (general interpretation)

3.—(1) In article 2(1) [F5]—

(a) after the definition of "debarked", insert—

""Decision 2002/757/EC" means Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. nov., as amended from time to time [F6].";

(b) after the definition of "Decision 2012/138/EU", insert—

""Decision 2012/535/EU" means Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode), as amended from time to time [F7];

"Decision (EU) 2015/789" means Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.), as amended from time to time [F8];

"Decision (EU) 2015/893" means Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky), as amended from time to time [F9];

"Decision (EU) 2015/2416" means Commission Implementing Decision (EU) 2015/2416 recognising certain areas of the United States of America as being free from *Agrilus planipenn*is Fairmaire, as amended from time to time [F10].";

(c) for the definitions of "ISPM No 4" and "ISPM No. 15" substitute—

""ISPM No. 4" means International Standard for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest-free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations [F11];

"ISPM No. 15" means International Standard for Phytosanitary Measures No. 15 of March 2002 on the regulation of wood packaging material in international trade, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations [F12].";

(d) after the definition of "seed", insert—

""solid fuel wood" means fuel wood in the form of logs, billets, twigs, faggots or other similar forms;";

(e) after the definition of "wood packaging material", insert—

";

"working day", in relation to the notice requirements in articles 6(3)(b)(ii), 16(3) and 18(4) and the period for which material may be detained under article 14(1), means a period of twenty-four hours which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in England or Scotland;

"working hour" means a period of one hour during a working day".

(2) After article 2(4), insert—

"(5) The requirements specified in any entry in column 3 of Part A, Part B or Part C of Schedule 4 are without prejudice to any other requirements specified in another entry in column 3 of that Part.".

F5 The definition of "Decision 2012/138/EU" was inserted by S.I. 2013/2691. The definition of "wood packaging material" was substituted by S.I. 2014/2420. There are other amendments to article 2, but none is relevant.

F6 OJ No L 252, 20.9.2002, p. 37, as last amended by Commission Implementing Decision 2013/782/EU (OJ No L 346, 20.12.2013, p. 69).

F7 OJ No L 266, 2.10.2012, p. 42, as amended by Commission Implementing Decision (EU) 2015/226 (OJ No L 37, 13.2.2015, p. 21).

F8 OJ No L 125, 21.5.2015, p. 36, as last amended by Commission Implementing Decision (EU) 2016/764 (OJ No L 126, 14.5.2016, p. 77).

F9 OJ No L 146, 11.6.2015, p. 16.

F10 OJ No L 333, 19.12.2015, p. 128.

F11 As last amended in June 2015; the latest published version is available at https://www.ippc.int/en/core-activities/standards-setting/ispms./.

F12 As last amended in June 2016; the latest published version is available at https://www.ippc.int/en/core-activities/standards-setting/ispms./.

Article 3 (interpretation of Part 2)

4. In article 3, omit the definitions of "working day" and "working hour".

Article 6 (advance notification of landing)

5. For paragraphs (1) and (2) of article 6 [F13] substitute—

"(1) Subject to article 29(3), the landing in England or Scotland by any person of relevant material to which paragraph (2) applies is prohibited unless notice is given to the Commissioners in accordance with this article.

(2) The prohibition on landing relevant material in paragraph (1) applies to the landing in England or Scotland, where England or Scotland is the point of entry of the material into the European Union, of the following relevant material—

(a) any relevant material specified in Part A of Schedule 5;

(b) any relevant material specified in Part B of Schedule 5 and which is—

(i) listed in column 1 of Part C of Schedule 4;

(ii) listed in the second column of Annex II Part B of the Directive and in the course of its consignment to a protected zone that is recognised as a protected zone for the tree pest listed in the first column of that Annex opposite the reference to the relevant material; or

(iii) listed in the first column of Annex IV Part B of the Directive and in the course of its consignment to a protected zone that is recognised as a

protected zone for the tree pest specified in the second column of that Annex opposite the reference to the relevant material; or

(c) any solid fuel wood to which sub-paragraphs (a) and (b) do not apply and whose final destination is in England or Scotland.".

F13 Article 6(1) and (2) was amended by S.I. 2011/1043, 2013/755 and 2014/2420.

Article 18 (prohibitions and restrictions on landing tree pests and relevant material)

6. After article 18(2) [F14], insert—

"(3) No person may bring any solid fuel wood into England or Scotland from another part of the European Union unless the Commissioners are given notice in accordance with the requirements of Schedule 12.

(4) A notice under paragraph (3) shall be given to the Commissioners—

(a) in the case of any solid fuel wood brought by air, at least four working hours before its expected time of arrival; and

(b) in any other case, at least three working days before its expected date of arrival.".

F14 Article 18(2) was amended by S.I. 2013/755.

Article 20 (requirements for plant passports)

7. After article 20(8) [F15], insert—

"(9) In the case of any relevant material of a description specified in paragraph 1A of Part A of Schedules 6 and 7, the plant passport shall have been issued by a treatment facility authorised in accordance with Article 13 of Decision 2012/535/EU.".

F15 Article 20(8) was originally inserted by S.I. 2013/2691 and amended by S.I. 2014/2420.

Article 21 (exceptions from certain prohibitions and requirements)

8. In article 21 [F16]—

(a) in paragraph (1), after "(g)", insert " and (3) ";

(b) after paragraph (2) insert—

"(2A) In the case of trees of host plants within the meaning of Article 1(b) of Decision (EU) 2015/789, the requirements in article 20(1) and (5) which would apply by virtue of paragraph 9 of Part A of Schedules 6 and 7 do not apply where the trees are being moved by a person acting for purposes outside the person's trade, business or profession and the person is acquiring them for personal use.".

F16 Article 21 was amended by S.I. 2013/2691 and 2014/2420.

Article 40 (notification of the presence or suspected presence of certain tree pests)

9. In article 40 [F17]—

(a) in paragraph (1), for "any tree pest to which this article applies" substitute " any notifiable tree pest ";

(b) after paragraph (1A), insert—

"(1B) If the Commissioners become aware of the presence or suspected presence of *Xylella fastidiosa* (Wells et al.) in any place or area in England or Scotland, the Commissioners shall ensure that any person having under their control trees which may be infected by *Xylella fastidiosa* (Wells et al.) is immediately informed of—

(a) its presence or suspected presence;

(b) the possible consequences arising from its presence or suspected presence; and

(c) the measures to be taken as a result.";

(c) in paragraph (2), for "This article applies to" substitute " In paragraph (1), "notifiable tree pest" means ".

F17 Article 40 was amended by S.I. 2006/2696 and 2014/2420.

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

10. In Schedule 1 [F18]—

(a) after item 10 under the heading "Insects, mites and nematodes", insert—

"**Bacteria**

1.	*Xylella fastidiosa* (Wells et al.)";

(b) after item 10 under the heading "Fungi", insert—

"11.	*Phytophthora ramorum* Werres, De Cock & Man in 't Veld sp. nov.".

F18 There are amendments to Schedule 1, but none is relevant.

Schedule 3 (relevant material which may not be landed in Great Britain if that material originates in certain third countries)

11. In Schedule 3 [F19]—

(a) in the entry in the third column of item 5, after "North America", insert " , other than the USA ";

(b) after item 8, insert—

"9.	Susceptible bark within the meaning of Article 1(4) of Decision 2002/757/EC	the USA".

F19 Item 8 was amended by S.I. 2009/3020.