

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

19 July 2019

PART 1

1. Description

This instrument amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) ('the principal Order') which contains measures to prevent the introduction and spread of harmful tree pests and diseases.

It implements EU plant health legislation including Commission Decision 2002/757/EC, Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU and 2015/2416/EU.

It implements Commission Implementing Directive 2017/1279, Commission Implementing Decision (EU) 2017/204, and Decision No 1/2015 of the Joint Committee on Agriculture relating to the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

Furthermore, it implements the specific control measures to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

This Order is necessary to ensure consistent plant health requirements within Great Britain and to maintain consistent biosecurity measures and additionally to ensure that European measures are implemented in order to update the lists of tree pests and infected material and to permit Welsh Ministers to apply the associated restrictions/prohibitions/ treatments.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

To ensure continued enforceability with the rest of the UK it has become necessary to breach the 21 day rule. Scotland laid their equivalent Statutory Instrument on the 15th July and it came into force on the 16th of July. England laid their Statutory Instrument on the 15th July which came into force on the same day.

Currently imports of oak trees from regions where this pest is present are allowed under certain surveillance and regulations, however, findings in the wider environment in England and Wales have proved that these regulations are not sufficient and as a result a number of OPM findings have been reported outside of London across England and Wales. It is therefore necessary to immediately stop all potentially infested imports of Oak trees as soon as possible to reduce the potential spread of OPM throughout the UK.

3. Legislative background

The Plant Health (Forestry) (Amendment) (Wales) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967. Section 1 of the Plant Health Act 1967 provides that the Act has effect for the control of pests and diseases injurious to agricultural or horticultural crops and trees or bushes.

Section 2(1) of the 1967 Act provides that a competent authority may from time to time make such orders as it thinks expedient or called for by an EU obligation for preventing the introduction of pests into Great Britain. Section 3(1) provides a corresponding power in relation to the control of the spread of pests in Great Britain. The competent authority as regards the protection of forest trees and timber and for all other plants and plant material is, in relation to Wales, the Welsh Ministers.

Section 6 of the Plant Health Act 1967 provides that this instrument is subject to the negative procedure.

Equivalent legislative amendments have already been made in relation to England and Scotland.

4. Purpose and intended effect of the legislation

The purpose of the Plant Health (Forestry) Order 2005 (“the 2005 Order”) is to prevent the introduction and spread of harmful plant pests and diseases. The 2005 Order has previously been amended on numerous occasions in order to implement EU law in this area, most recently in Wales by the Plant Health (Forestry) (Amendment) (Wales) Order 2019. The 2005 Order now requires a further amendment in Wales reduce the risk of importing Oak trees infested with OPM.

This instrument aligns the law relating to plant health forestry in Wales with provisions in relation to England and Scotland.

The Order implements measures which strengthen import and movement requirements for oak trees, to minimise the risk of further incursions of *Thaumetopoea processionea* (oak processionary moth (OPM)).

It is necessary for the Minister to breach the 21 day laying rule due to the urgency needed to bring Welsh Government legislation in line with the rest of Great Britain. If not Wales will be a loophole in Plant trade and could still allow the importation of potentially infested material.

The earliest the Moths have been recorded flying in the UK is from 24 July and we need the ability to restrict potential plant trade pathways to minimise the spread and impact of this pest in Wales.

5. Consultation

No consultation was required. The changes implement EU legislation the detail of which had already been subject to negotiations with the Commission and other Member States.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).