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STATUTORY INSTRUMENTS

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**2018 No. 1048**

**PLANT HEALTH, ENGLAND  
PLANT HEALTH, SCOTLAND**

**The Plant Health (Forestry) (Amendment)  
(England and Scotland) Order 2018**

<i>Made</i>	- - - -	<i>8th October 2018</i>
<i>Laid before Parliament</i>		<i>10th October 2018</i>
<i>Coming into force</i>	- -	<i>1st November 2018</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(1).

**Citation, commencement and application**

1. This Order—
  - (a) may be cited as the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2018;
  - (b) comes into force on 1st November 2018; 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(2) is amended as follows.

**Article 2**

3. In article 2(1), after the definition of “official statement” insert—

““the OPM protected zone” means the area in England and Scotland which is within the protected zone recognised for the United Kingdom in relation to *Thaumetopoea*

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(1) 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.

(2) S.I. 2005/2517; relevant amending instruments are S.I. 2011/1043, 2012/2707, 2013/755, 2014/2420, 2016/1167, 2017/1178.

*processionea* L. and described in point 16 under heading (a) of Annex 1 to Regulation (EC) No 690/2008(3);”.

### **Article 3**

**4.** In article 3—

- (a) in the definition of “Customs Code”, for the words from “Council” to the end, substitute “Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code(4)”;
- (b) in the definition of “customs document”, for “Article 4(16)(a) and (d) to (g)”, substitute “Article 5(16)(a) and (b)”.

### **Article 14**

**5.** In article 14(1), for the words from “Article 37” to the end, substitute “Article 134 of the Customs Code”.

### **Article 17**

**6.** In article 17—

- (a) in paragraph (5), omit the words from “as referred to” to the end;
- (b) after paragraph (5) insert—

“(6) In paragraph (5), “temporary storage facility” has the same meaning as it has for the purposes of the Customs Code.”.

### **Article 20**

**7.** In article 20—

- (a) in paragraph (2)—
  - (i) after “within” insert “a protected zone in”;
  - (ii) omit “relevant territory as a”;
- (b) in paragraph (4)—
  - (i) after “within” insert “a protected zone in”;
  - (ii) for “the relevant territory in which the movement takes place as a” substitute “that”;
- (c) omit paragraph (8);
- (d) after paragraph (9) insert—

“(10) In paragraphs (2) and (4), “protected zone in a relevant territory”, in relation to England and Scotland, means any part of a protected zone which is in England and Scotland.”.

### **Schedule 1A**

**8.** In Schedule 1A, for the entry in column 2 of the table, substitute “the OPM protected zone”.

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(3) OJ No. L 193, 22.7.2008, p. 1, as last amended by Commission Implementing Regulation (EU) 2018/791 (OJ No. L 136, 1.6.2018, p. 1).

(4) OJ No. L 269, 10.10.2013, p. 1, as amended by Regulation (EU) 2016/2339 of the European Parliament and of the Council (OJ No. L 354, 23.12.2016, p. 32).

**Part B of Schedule 4****9.** After item 9 insert—

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“9A. Trees of host plants within the meaning of Article 1(b) of Decision (EU) 2015/789<sup>(5)</sup>, which have never been grown in an area established in accordance with Article 4 of that Decision, other than those which have been grown for their entire production cycle *in vitro* The plants must be accompanied by an official statement that they meet the requirements specified in Article 9(8)(a) of Decision (EU) 2015/789”.

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**Part C of Schedule 4****10.** In Part C of Schedule 4—

## (a) after the heading insert—

**“Interpretation of Part C**

In this Part, in item 7E, “excluded zone” means the area in England and Scotland which is not within the OPM protected zone.”;

## (b) after item 7D insert—

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<p>“7E. Trees, other than fruit or seeds, of <i>Quercus</i> L., other than <i>Quercus</i> suber, intended for planting, whose girth at 1.2 m above the root collar is 8 cm or more, other than—</p> <p>—any such plants entering England or Scotland via a point of entry in the excluded zone which are not in the course of their consignment to the OPM protected zone, or</p> <p>—any such plants originating in the excluded zone which do not move from the excluded zone into the OPM protected zone</p>	<p>The trees must be accompanied by an official statement that:</p> <p>(a) they have been grown throughout their life in places of production in countries in which <i>Thaumetopoea processionea</i> L. is not known to occur;</p> <p>(b) they have been grown throughout their life in a protected zone which is recognised as a protected zone for <i>Thaumetopoea processionea</i> L. or in an area free from <i>Thaumetopoea processionea</i> L., established by the national plant protection organisation in accordance with ISPMNo. 4;</p> <p>(c) they have been produced in nurseries which, along with their vicinity, have been found free from <i>Thaumetopoea processionea</i> L. on the basis of official inspections carried out as close as practically possible to their movement and official surveys of the nurseries and their</p>
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(5) OJ No. L 125, 21.5.2015, p. 36, as last amended by Commission Implementing Decision (EU) 2018/927 (OJ No. L 164, 29.6.2018, p. 49).

- vicinity have been carried out at appropriate times since the beginning of the last complete cycle of vegetation to detect larvae and other symptoms of *Thaumetopoea processionea* L.;
- or
- (d) they have been grown throughout their life in a site with complete physical protection against the introduction of *Thaumetopoea processionea* L. and have been inspected at appropriate times and found to be free from *Thaumetopoea processionea* L.”.
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8th October 2018

*Stephen Bennett*  
Secretary to the Forestry Commissioners

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Plant Health (Forestry) Order 2005 ([S.I. 2005/2517](#)) to—

- (a) implement Commission Implementing Decision (EU) 2017/2352 amending Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ No. L 336, 16.12.2017, p. 31);
- (b) introduce emergency measures to prevent the introduction of *Thaumetopoea processiona* L. (the Oak Processionary Moth) into the area in England and Scotland which is recognised as a protected zone for this harmful plant pest;
- (c) amend various references to EU instruments that are out of date.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.