

## EXPLANATORY MEMORANDUM TO

### THE PLANT HEALTH (AMENDMENT) (ENGLAND) ORDER 2019

2019 No. 1128

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and the Forestry Commission and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Plant Health (England) Order 2015 (S.I. 2015/610) (“the Plant Health Order”) and the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) (“the Forestry Order”), which contain measures to prevent the introduction and spread of *Thaumetopoea processionea* (oak processionary moth (OPM)), a harmful plant pest of oak trees. It makes amendments to the current measures to minimise the risk of further incursions of OPM, following recent findings of the plant pest on imported oak trees.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The emergency measures against OPM come into force at 19.00 on 15 July 2019 in breach of the rule requiring instruments to be laid at least 21 days before they come into effect, as action is needed urgently to prevent further introductions of this pest.
- 3.2 On 6 June 2019, an interception of OPM was made on recently planted oak trees that had been imported from the Netherlands into the county of Hampshire. A tracing exercise revealed further interceptions on recently planted oak trees across a number of counties in England and in other parts of the UK, originating from a number of Dutch nurseries.
- 3.3 Most of England is currently free from OPM and this pest-free area of England is recognised in EU plant health legislation as part of a UK Protected Zone. A Protected Zone is defined in the EU Plant Health Directive as a zone in which a harmful organism which is established in parts of the EU is not endemic or established, despite favourable conditions.
- 3.4 These recent interceptions have highlighted that a particular set of technical requirements for imports of oak trees is not proving effective against the introduction of OPM, and must be urgently removed to prevent any further oak trees infested with OPM being brought into the Protected Zone in England.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.5 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is to England and Wales.

4.2 The territorial application of this instrument is England.

**5. European Convention on Human Rights**

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

6.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU<sup>1</sup> (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 which extends to Great Britain. Similar but separate legislation to the principal Order operates in Scotland, Wales and Northern Ireland. The Devolved Administrations are introducing equivalent changes to their legislation.

6.2 OPM is regulated in the EU Plant Health Directive as a Protected Zone pest, with most of the UK (other than an infested area including and around Greater London) having this ‘Protected Zone’ status. Domestic measures were introduced in England in August 2018 to strengthen the measures that were already in place to prevent the establishment of OPM in the Protected Zone in England (“the OPM Protected Zone”). As a result, oak trees may not be brought into the OPM Protected Zone unless one of the options aimed at ensuring that they are free from OPM has been met. Recent interceptions have made it clear that one of the options for certifying OPM freedom is not proving effective, and must therefore be removed urgently.

**7. Policy background**

*What is being done and why?*

7.1 OPM causes heavy defoliation leading to weakening of oak trees. Apart from the intrinsic damage (loss of growth and reduction in timber values) it is also regarded as an important contributor to long term decline of oak trees in several countries. Contact with the hairs of caterpillars can also cause extreme irritation for both humans and animals. In continental Europe the wider human health impacts of OPM can lead to school closures and closures of public places for recreation.

7.2 Import controls were strengthened against OPM in 2018 (S.I. 2018/910), prior to the 2018-2019 planting season, in an effort to protect against introductions from increasing populations of OPM in continental Europe. However, recent interceptions of OPM on recently planted oak trees imported from the Netherlands have highlighted

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<sup>1</sup> This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

that these controls are not preventing the arrival of infested trees into the UK. As the pest is highly mobile, any undetected incursions carry a significant risk of spread and establishment if not caught early.

- 7.3 The current legislation contains an option to allow import and movement of large oak trees (with a girth of more than 8cm at 1.2m above the root collar) that have been grown in nurseries, which along with their vicinity, have been found free from OPM, on the basis of official inspections carried out as close as practically possible to their movement. This option has been found to be ineffective. Vicinity inspections around nurseries do not provide adequate protection as infested trees are being exported from such nurseries. It is known that adult moths of both sexes can fly significant distances and once present at a nursery, moths lay egg plaques which are very difficult to detect on large trees. It is therefore not possible to guarantee that trees grown in open areas where OPM is known to be present are free from the pest. There are no feasible means of strengthening this option to provide adequate protection. This instrument therefore removes it.
- 7.4 The remaining options provide strong guarantees that plants will be free from OPM when they are brought into the OPM Protected Zone and therefore remain sufficient. Following this change, large trees can only be imported into the OPM Protected Zone from other Member States if they have been grown under complete physical protection or originate in the Republic of Ireland which is also a Protected Zone and therefore free from the pest. Smaller trees can still be imported and moved as these represent a low risk of infestation as the pest has a strong preference for large trees. These remaining options will minimise impacts on businesses by still allowing some movement of oak while providing strong protection against further introductions.
- 7.5 To ensure that identical controls are in place in England under the Plant Health (England) Order 2015 and the Plant Health (Forestry) Order 2005, amendments are necessary to both Orders. If these amendments were not introduced as a matter of urgency, the Orders would continue to allow oak trees infested with OPM to be brought into the OPM Protected Zone, making it likely that there would be further introductions of this pest. This would require further action to eradicate these introductions, and would increase the likelihood of the pest becoming established, with associated costs to government, businesses and individuals.
- 7.6 Articles 2 and 5 of this Order are made by the Forestry Commissioners, as the competent authority under the Plant Health Act 1967 (c.8) in relation to the protection of forest trees and timber in England. Articles 3 and 4 of this Order are made by the Secretary of State, as the competent authority under that Act in relation to non-forestry matters in England.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 This is not a consolidation. The new EU Plant Health Regulation (Regulation (EU) 2016/20312), part of a package of revised regulations under the agri-food chain, applies in December 2019. Implementation of the EU Plant Health Regulation would require significant changes to domestic legislation.

## **10. Consultation outcome**

- 10.1 UK stakeholder groups are supportive of action to prevent introductions of OPM. The main stakeholder organisations were engaged with through Defra's Tree Health Policy Group ahead of the introduction of this instrument.

## **11. Guidance**

- 11.1 The main stakeholders likely to be affected will be informed of the new measures and a summary of the changes will be placed on the Defra website.

## **12. Impact**

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies. These restrictions may reduce the availability of large, mature imported oak trees, but impacts have been minimised by imposing stronger restrictions only on larger trees which are known to pose greater risks. It will remain possible to source such larger trees from within the UK Protected Zone or the Republic of Ireland, or if grown under physical protection. OPM has the potential, where established, to cause significant ongoing costs to a range of stakeholders, relating to ongoing management of the pest. It also has the potential to damage oak trees, which provide important environmental, social and commercial benefits across the country. Stakeholders are supportive of these measures.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the level of impact per business is low.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is the UK's risk-based approach to plant health, where proportionate action is taken to protect the UK's biosecurity without introducing unnecessary barriers to trade. The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

## **14. Monitoring & review**

- 14.1 The Directive (and therefore the Orders) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. A new EU Plant Health Regulation (Regulation (EU)

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<sup>2</sup> This Regulation can be found at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519643730000&uri=CELEX:32016R2031>

2016/20313) was published on 26 October 2016 as part of a package of revised regulations under the agri-food chain.

## **15. Contact**

- 15.1 Iain Johnstone ([iain.johnstone@defra.gov.uk](mailto:iain.johnstone@defra.gov.uk)) at the Department for Environment, Food and Rural Affairs can answer any queries regarding this instrument.
- 15.2 Dr John Morgan ([john.morgan@forestrycommission.gov.uk](mailto:john.morgan@forestrycommission.gov.uk)), Head of Plant Health, Forestry Commission can answer any queries regarding this instrument.
- 15.3 Nicola Spence, Deputy Director at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Richard Greenhous, Director, Forest Services, Forestry Commission England can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, can confirm that this explanatory memorandum meets the required standard.

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<sup>3</sup> This Directive can be found at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519643730000&uri=CELEX:32016R2031>