

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (FORESTRY) (AMENDMENT) (ENGLAND AND**  
**SCOTLAND) ORDER 2017**

**2017 No. 1178**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 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.
- 2.2 It implements EU plant health legislation in relation to England and Scotland, including 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). It also introduces a new provision to allow the disclosure of information for the purposes of the principal Order from HM Revenue and Customs (HMRC) to the Forestry Commission.
- 2.3 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

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

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

- 3.1 In its Twentieth Report of Session 2016-17, the Joint Committee on Statutory Instruments reported S.I. 2016/1167 for defective drafting. Article 3 of this Order amends article 2(3A) of the principal Order to include a reference to Article 18(3) of the principal Order.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Council Directive 2000/29/EC on protective measures against the introduction into the European Union of organisms harmful to plants or plant products and against their

spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in Great Britain for forestry matters by the principal Order, but the functions of the Forestry Commissioners under the principal Order were transferred as regards Wales to the Welsh Ministers on 1 April 2013 by S.I. 2013/755. Similar but separate legislation implements the Plant Health Directive for non-forestry matters in England, Wales and Scotland.

- 4.2 A number of instruments, listed in paragraphs 7.2, 7.3 and 7.4, have been adopted which modify the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address risks presented by other pests and diseases.
- 4.3 In addition, as described in paragraph 7.6, a new provision is introduced to allow the disclosure of information from HMRC.
- 4.4 These amendments are to be implemented through this instrument, which comes into force on 1st January 2018. The changes are described in more detail below.

## **5. Extent and Territorial Application**

- 5.1 This instrument extends to Great Britain, but applies in relation to England and Scotland only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 The Plant Health Directive (Council Directive 2000/29/EC) establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Directive and therefore the principal Order are updated frequently, to take account of new or revised risk assessments, pest interceptions, change in distribution of tree pests and other developments. This instrument implements specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases.
- 7.2 The main EU measures are contained in Commission Implementing Directive 2017/1279 (for further details, see the Transposition Note in the Annex):
  - a. *Thaumetopoea processionea* L., the Oak Processionary Moth  
The Implementing Directive adds Guildford and Woking to the description of the boroughs that are excluded from the *Thaumetopoea processionea* protected zone in the United Kingdom.
  - b. *Thaumetopoea pityocampa* Denis & Schiffermüller – pine processionary moth
  - c. *Candidatus Phytoplasma ulmi* - Elm yellows phytoplasma  
The Implementing Directive recognises the United Kingdom as a protected zone for these pests. Plants and plant produce that are hosts of these pests must reach higher plant health standards before entering the UK.

- d. Amended measures for wood of *Platanus* in relation to *Ceratocystis platani* - Plane wilt  
The exemption of wood packaging material from the specific requirements for wood of *Platanus* L. in the relevant section of the Directive has been updated as it was omitted in the last amendment of the Section.
  - e. *Saperda candida* Fabricius - Round-headed Apple Tree Borer  
The Implementing Directive introduces measures against the introduction into the EU of *Saperda candida* Fabricius.
- 7.3 The Order also introduces a further technical change to EU measures made by Commission Implementing Decision (EU) 2017/204, which repealed Implementing Decision (EU) 2015/2416 recognising certain areas of the United States of America as being free from *Agrilus planipennis* (Emerald Ash Borer).
- 7.4 Decision No 1/2015 of the Joint Committee on Agriculture concerning the amendment to Appendices 1, 2 and 4 to Annex 4 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products is also implemented via the instrument. This is a technical update of the requirements with regard to relevant material from Switzerland which maybe landed in or moved within England and Scotland if accompanied by a Swiss plant passport.
- 7.5 New article 18(3) in Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016 prohibited any person from bringing solid fuel wood into England or Scotland “from another part of the European Union” omitting any corresponding provision to exclude a relevant territory from the reference to another part of the EU. This instrument inserts a reference to article 18(3) in article 2(3A) of the principal Order to make it clear that solid wood fuel from Wales is excluded from the requirements in article 18(3).
- 7.6 The instrument introduces a new provision to allow the disclosure of information for the purposes of the Plant Health (Forestry) Order 2005 from HM Revenue and Customs (HMRC) to the Forestry Commission. The Instrument creates an associated offence (in relation to England and Scotland) for wrongful disclosure of this information without the prior consent of HMRC.
- 7.7 Similar measures are being considered by the Welsh Government.

### ***Consolidation***

- 7.8 There are no immediate plans to consolidate the principal Order and the instruments amending this Order.

## **8. Consultation outcome**

- 8.1 The views of stakeholders were sought and taken into account of during negotiations with the Commission and other Member States.

## **9. Guidance**

- 9.1 The main stakeholders have been informed of the proposed changes and a summary of the measures have been placed on the Forestry Commission website.

## **10. Impact**

- 10.1 An impact assessment has not been produced for the inclusions of any of the changes described in the Order amendment as these are technical changes and no impact on business or the private or voluntary sector is foreseen.

## **11. Regulating small business**

- 11.1 This legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 This Order applies equally to all businesses importing controlled plant health material. The risk of introducing harmful organisms is not mitigated by the size of the business.

## **12. Monitoring & review**

- 12.1 The Plant Health Directive and therefore the principal Order are updated frequently, to take account of new or revised risk assessments, pest interceptions, change in distribution of pests and other developments. A new EU Plant Health Regulation (Regulation (EU) 2016/2013) was published last year as part of a package of revised regulations under the agri-food chain.. The Forestry Commission is planning to carry out a review of the principal Order in the next two years.

## **13. Contact**

- 13.1 Dr John Morgan (Plant Health Service, Forestry Commission, 231 Corstorphine Road, Edinburgh EH12 7AT. Tel 0300 067 5170, or e-mail [john.morgan@forestry.gsi.gov.uk](mailto:john.morgan@forestry.gsi.gov.uk) can answer any queries regarding the instrument.

## ANNEX

### Transposition Note for the transposition of Commission Implementing Directive (EU) 2017/1279 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants, or plant products and against their spread within the Community

<b>Commission Implementing Directive (EU) 2017/1279</b>		
<b>Provision in Annex</b>	<b>Amendment to Directive 2000/29/EC (“the Plant Health Directive”)</b>	<b>Provision in the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2017</b>
(1)(a)	Amendments to Section I, Part A, Annex I to the Plant Health Directive	Article 7 (amending Schedule 1 to the Plant Health (Forestry) Order 2005 (“the principal Order”). Nothing further required for amendments in (1)(a).
(1)(b)	Amendment to Part B, Annex I to the Plant Health Directive	Article 8 (amending Schedule 1A to the principal Order). Nothing required for other amendments in (1)(b).
(2)(a)	Amendments to Part A, Annex II to the Plant Health Directive	Nothing required for amendments to (2)(a).
(2)(b)	Amendment to Part B, Annex II to the Plant Health Directive	Article 9 (amending Part B of Schedule 2 to the principal Order). Nothing required for other amendments in 2(b).
(3)	Amendment to Part B, Annex III to the Plant Health Directive	Nothing required for amendments to (3).
(4)(a)(i)	Amendments to Section I, Part A, Annex IV to the Plant Health Directive	Article 10(1)(a), (c), (d), (e), (h) and (i) (amending Part A of Schedule 4 to the principal Order). Nothing required for other amendments in (4)(a)(i).
(4)(a)(ii)	Amendments to Section II, Part A, Annex IV to the Plant Health Directive	Article 10(2) (amending Part B of Schedule 4 to the principal Order). Nothing required for other amendments in (4)(a)(ii).
(4)(b)	Amendments to Part B, Annex IV to the Plant Health Directive	Article 10(3) (amending Part C of Schedule 4 to the principal Order). Nothing required for amendments in (4)(b).
(5)(a)(i)	Amendments to Section I, Part A, Annex V to the Plant Health	Articles 12(1) and 13(1) (amending Part A of Schedules

	Directive	6 and 7 to the principal Order). Nothing required for other amendments in (5)(a)(i).
(5)(a)(ii)	Amendments to Section II, Part A, Annex V to the Plant Health Directive	Articles 12(2) and 13(2) (amending Part B of Schedules 6 and 7 to the principal Order). Nothing required for other amendments in (5)(a)(ii)
(5)(b)	Amendments to Part B, Annex V to the Plant Health Directive	Article 11 (amending Part A of Schedule 5 to the principal Order). Nothing required for other amendments in (5)(b).