

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT HEALTH (FORESTRY) (AMENDMENT) (ENGLAND AND**  
**SCOTLAND) ORDER 2018**

**2018 No. 1048**

**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 plant pests and diseases. It implements the specific control measures to prevent the introduction of the pest *Xylella fastidiosa* in Commission Implementing Decision (EU) 2017/2352.

2.2 In addition, the instrument 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)).

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

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

3.1 None.

*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)*

3.2 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 extent of this instrument is to Great Britain.

4.2 The territorial application of this instrument is England and Scotland.

**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 Great Britain in relation to forest trees and timber by the principal Order but the functions of the Forestry Commissioners under that Order were transferred as regards Wales to Welsh Ministers on 1st April 2013 by SI 2013/755. Similar but separate legislation to the principal Order implements the Plant Health Directive for non-forestry matters in England, Wales and in Scotland.

- 6.2 Commission Implementing Decision (EU) 2015/789 introduced measures intended to prevent the introduction into and spread within the EU of *Xylella fastidiosa*. The original measures have been amended and updated several times responding to scientific and disease developments, including findings in new areas. This instrument implements changes to import controls, introduced through Commission Implementing Decision (EU) 2017/2352, responding to technical changes in the assessment of the risks presented by *Xylella fastidiosa*.
- 6.3 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 the status of an EU protected zone. That means that oak trees being moved into the UK protected zone from other parts of the EU and from the infested area around Greater London must be accompanied by a plant passport confirming OPM freedom. A recent interception of OPM on oak trees from Netherlands has highlighted that current import controls need to be strengthened. National legislation to strengthen import requirements to protect against OPM for oak trees used for forestry purposes is to be introduced through this instrument.

## 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 to prevent the further introduction and spread within the EU of *Xylella fastidiosa*, a bacterium which causes disease in a wide range of woody plants including several species of broadleaf trees. The pathogen has limited distribution in some other European countries and is not known to be present in the UK.
- 7.2 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 oak decline in several countries. Contact with the hairs of mature larvae 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.
- 7.3 OPM is established across many parts of Europe and is regulated in the EU Plant Health Directive as a protected zone pest, with most of the UK (other than an infested area around Greater London) having the status of an EU protected zone. This means

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

that oak trees being moved into the UK protected zone from other parts of the EU and from the infested area around Greater London must be accompanied by a plant passport confirming OPM freedom.

- 7.4 A recent interception of OPM on oak trees supplied from the Netherlands follows a similar one in 2016. Prior to that there have there have been five other interceptions on imported oak trees going back to 2006. These interceptions highlight that the current EU import requirements are not preventing infested trees being sent to the UK.
- 7.5 As a result, further controls to strengthen import requirements for oak trees were introduced through the Plant Health (England) (Amendment) (No. 3) Order 2018 (S.I.2018/910) which came into force on 21st August 2018. These controls apply to all uses of oak trees and also included strengthened movement controls from the infested area around London into the protected zone. This Order amends the principal Order to introduce the same controls in relation to England and Scotland. The UK is also pressing for such requirements to be included in a current package of EU legislation changes being developed by the European Commission to take effect from 2019. The national measures provide protection for the main 2018 import season, which for forestry material, begins in late October 2018.
- 7.6 In an effort to keep negative impacts to a minimum, while still delivering the desired biosecurity benefits, the new requirements are restricted to trees with a girth of 8cm or more and these are not normally used for forestry purposes. The restriction only applies to trees with a girth of 8cm or more because all our interceptions have been on oak trees with a girth of greater than 8cm, our surveillance of oak trees in the London area (where the pest is present and where tens of thousands of inspections have been carried out), has never detected OPM on trees with a girth of less than 8cm. The existing plant passport arrangements would continue to apply to oak trees with a girth of less than 8cm for movements into and within the UK protected zone to ensure that trees being moved are free of OPM.
- 7.7 A new European Union Customs Code<sup>2</sup> lays down the general rules and procedures applicable to goods which are either brought into or taken out of the customs territory of the European Union. This new Union Customs Code replaced the Community Customs Code and this instrument makes updates to the Order using references to new Union Customs Code.

## **8. European Union (Withdrawal) Act/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.

## **9. Consolidation**

- 9.1 This is not a consolidation.

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<sup>2</sup> Regulation (EU) No. 952/2013 of the European Parliament and of the Council laying down the Union Customs Code can be found at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R0952>

## **10. Consultation outcome**

- 10.1 There is good recognition and support for the importance of keeping the pest out of the UK by stakeholder groups. The main stakeholder organisations have been consulted through the Tree Health Policy Group.

## **11. Guidance**

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

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies. The requirements apply mainly to non-forestry material which originates in countries exporting to the EU.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 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 Order, 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) 2016/2031<sup>3</sup>) was published on 26 October 2016 as part of a package of revised regulations under the agri-food chain.

## **15. Contact**

- 15.1 John Morgan, Forestry Commission, 231 Corstorphine Road, Edinburgh, EH12 7AT; Tel: 0300 067 5170 e-mail: john.morgan@forestry.gsi.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Richard Greenhous, Deputy Director for Forest Services, Forestry Commission can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble at the Department of Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

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