

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

2016 No. 1167

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 Decision 2002/757/EC and Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU and 2015/2416/EU. It also introduces a scheme requiring all consignments of solid fuel wood to be notified to the Forestry Commission prior to their landing in England and Scotland.
- 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 None.

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 EU¹ (“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

¹ This Directive can be found at http://ec.europa.eu/food/plant/plant_health_biosecurity

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 EU instruments listed in paragraph 7.2 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 These amendments are to be implemented through this instrument, which comes into force on 1st January 2017. The changes are described in more detail below.
- 4.4 In addition, in response to UK plant health risk analysis; this instrument extends existing measures in the principal Order to require the advance notification of the landing of all consignments of solid fuel wood. It also implements Commission Decision 2002/757/EC on provisional emergency measures to prevent the introduction and spread within the EU of *Phytophthora ramorum* which was previously implemented by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004 (S.I.2004/3213).

5. Extent and Territorial Application

- 5.1 This instrument extends to Great Britain.
- 5.2 This instrument applies 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 These EU measures are contained in several EU instruments:

Commission Implementing Decision 2014/690/EU which repeals Commission Decision 2006/464/EC on provisional measures to prevent the introduction into and the spread within the Community of *Dryocosmus kuriphilus* (oriental chestnut gall wasp).

The measures set out by Commission Decision 2006/464/EC did not prevent the spread of *Dryocosmus kuriphilus* and the pest was widely spread within the Union territory. However, as it is still absent from parts of the UK, the UK has been designated as a protected zone for this pest under EU legislation. National protected

zone measures to give effect to this designation were introduced through the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2014 (S.I. 2014/2420).

Commission Implementing Decision 2015/789/EU (as last amended by Commission Implementing Decision (EU) 2016/746) which implements measures intended to prevent the introduction into and the spread within the EU of *Xylella fastidiosa* (a bacterium which causes harmful effects on a range of plants, including certain trees).

Commission Implementing Decision 2015/893/EU which introduces strengthened measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (the Asian long-horned beetle).

This pest poses a serious threat to a wide range of broadleaved trees. The measures include specific requirements for the import of specified plants, wood and wood packaging from third countries and for the movement of specified plants, wood and wood packaging within the Union.

Commission Implementing Decision 2012/535/EU (as amended by Commission Implementing Decision 2015/226/EU) which contains emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (pine wood nematode).

Commission Implementing Decision 2015/2416/ EU which recognises certain areas of the United States of America as being free from *Agrilus planipennis* (Emerald ash borer).

Under the Plant Health Directive ash may only be imported if the wood originates in an area or country recognised by the EU as being free from *Agrilus planipennis* or the bark and at least 2.5 cm of the outer sapwood are removed in a facility authorised and supervised by the national plant protection organisation. The Decision lists those areas of the United States of America that should be recognized as being free from *Agrilus planipennis* organism.

- 7.3 The UK Plant Health Risk Group, which is chaired by Defra and whose membership includes representatives from all the UK Plant Health Authorities, has identified solid fuel wood as a potential high risk pathway for harmful pests and diseases. Solid fuel wood is not regulated any differently to other forms of wood and whereas some timber species are covered by specific import requirements, others are not subject to any control. However, additional risks can apply as unprocessed wood and trees are expected to be more at risk from infestation by harmful organisms than other highly processed and treated forms of timber. For example solid fuel wood has been implicated in the introduction and spread of Emerald Ash Borer (EAB) in North America where it has been a significant cause for the decline and mortality of ash trees across a number of states. The level of processing normally determines the amount of residual bark. Solid fuel wood is not normally debarked or subjected to phytosanitary treatment during preparation for sale.
- 7.4 Imports of some species (mainly conifers, birch, oak, ash, maple, plane and poplar/aspens) of solid fuel wood from certain third countries must already be notified in advance to the Forestry Commission. This instrument will extend this pre-notification requirement to all other imports of solid fuel wood from third countries and also to imports of solid fuel wood from the EU. Pre-notification of solid wood fuel will provide information about the origin and the condition of material and allow targeted inspections to be carried out in response to threats posed by this material. The additional evidence obtained from these inspections may eventually also lead to strengthened import controls for this material.

- 7.5 Emergency measures to prevent the introduction into and the spread within the EU of *Phytophthora ramorum* were introduced by Commission Decision 2002/757/EC. This decision was implemented in respect to forestry by the Plant Health (Forestry) (*Phytophthora ramorum*) (Great Britain) Order 2004. To simplify the legislative landscape, this instrument consolidates the 2004 Order with the principal Order and revokes the 2004 Order and an Order which amended the 2004 Order in 2007.
- 7.6 Similar measures are being considered by the Welsh Government.
- 7.7 There are no immediate plans to consolidate the principal Order and the instruments amending this Order.

8. Consultation outcome

- 8.1 A 12 week consultation on introducing the statutory notification scheme closed in June 2015. Twenty five known importers of solid wood fuel were contacted along with industry groups and institutions. Eight responses were received to the consultation: four from importers of solid fuel wood and four from timber or forestry/woodland related organisations (i.e. Confor, Institute of Chartered Foresters, UK Forest Products Association and the Woodland Trust). There was general support for the introduction of a notification scheme from the importers and very strong support from the timber or forestry/woodland related organisations.
- 8.2 The other changes implement EU legislation. 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. Guidance for importers of solid fuel wood has been produced and a web based notification system introduced.

10. Impact

- 10.1 The Regulatory Policy Committee and Cabinet Committee have approved the fast-track procedure for assessing the impact of introducing the statutory notification scheme and the impact assessment is published with this Explanatory Memorandum. Impact assessments have not been prepared for the other changes, which are minor in nature or reflect technical adjustments to the EU regime and no impact on business is foreseen. There is no impact on charities or voluntary bodies.
- 10.2 The impact on business in the UK of the introduction of the statutory notification scheme for solid fuel wood will be an equivalent annual net cost to industry of £3,523.
- 10.3 The annual cost to government is estimated at an annual cost of £10,000. This is a back office cost to the Forestry Commission of staff time to provide the administration of the notifications, of around £2,500 per year. The remainder, of £7,500, is to cover the cost of inspectors and Forestry Commission staff of undertaking inspections of a sample of solid fuel wood imports.

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 and non-controlled solid fuel wood. 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. The EU plant health regime is also currently under review as part of a package of revised regulations under the agri-food chain. The Forestry Commission is planning to carry out a review 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) can answer any queries regarding the instrument.