

EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (SWEET CHESTNUT BLIGHT) (ENGLAND) ORDER 2017

2017 No. 178

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs 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 introduces emergency measures in response to outbreaks of *Cryphonectria parasitica* (sweet chestnut blight), a disease which is harmful to sweet chestnut and oak trees. It provides for the demarcation of areas around confirmed findings of the disease (“outbreak areas”) and, in relation to any outbreak area, prohibits the movement of susceptible material from or within that area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The emergency measures against the fungal disease sweet chestnut blight come into force on 21st February 2017 in breach of the rule requiring instruments to be laid at least 21 days before they come into effect. To date, since the first outbreak site was found on the 19th December 2016, six confirmed outbreaks have been found in the counties of Devon and Dorset (in a period of less than two months). Extensive surveillance of trees is being done around the outbreak sites to look for presence of the disease in the wider environment (involving surveys of all host trees up to 5km from symptomatic trees). Urgent action is necessary to restrict the movement of sweet chestnut and oak material from or within outbreak areas, due to the risk of spreading infection. This is a significant risk as the disease, which is not established in the UK, can be present in latent form, so can be moved even if visual symptoms are not observed. Additionally, the fungus which causes the disease is known to be active at this time of year, so if infected material (including plants, firewood) is moved there is the enhanced risk of spread from early spring onwards (due to high levels of sporulation).
- 3.2 As part of the immediate response to the outbreaks and as an interim measure, a limited number of Statutory Notices to impose movement restrictions have been served on the major affected landowners and businesses in close proximity to the outbreaks, using general plant health powers. However, this provides only limited protection as there are likely to be more businesses and individuals in the outbreak areas where sweet chestnut and oak are present and it is not feasible to issue individual Notices on all these premises. To ensure that the risk of spread of the disease is minimised, it is necessary to extend movement restrictions to all businesses and other persons with sweet chestnut and oak material within the outbreak areas. This instrument will ensure that all sweet chestnut and oak material which is capable

of spreading the disease is subject to appropriate movement restrictions and will provide greater transparency about the extent of the restrictions.

- 3.3 Under the Order, Notices demarcating areas in relation to confirmed findings of sweet chestnut blight will be issued. The Notices will be issued in batches as surveillance is completed and the extent of outbreak areas can be confirmed – the first two Notices (covering the first 3 outbreak areas) will apply from Friday 24th February, to enable a short period of time to publicise the Notices. Areas will be demarcated in response to confirmed findings and any further Notices will be issued as and when needed. Local level engagement is underway to publicise the intention to introduce movement restrictions. A communications plan is in place as part of the response to the sweet chestnut blight outbreaks, as part of this specific communications materials have been developed to support the implementation of the Order and to publicise the Notice. Those likely to be affected will be informed of the instrument via website guidance, local publicity and directly via Forestry Commission and APHA inspectors.
- 3.4 This entire instrument applies only to England.

Other matters of interest to the House of Commons

- 3.5 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 Sweet chestnut blight is a regulated organism under the EU Plant Health Directive (2000/29/EC) (“the Directive”). The EU requirements in the Directive, which are implemented by the Plant Health (England) Order 2015 and the Plant Health (Forestry) Order 2005, regulate the main trade pathways by which the organism can be spread. There are two sets of requirements, reflecting the plant health status of different parts of the EU. One set of requirements, which applies across the EU, including in areas where the disease is present, aims to limit the further spread of the disease on host planting material (sweet chestnut and oak plants). These requirements prohibit the introduction into and the movement within the EU of host planting material which is infected with the disease and also prohibit the movement of this material unless it originates in a pest free area or from premises where symptoms of the disease have not been observed and is accompanied by a plant passport. Additional requirements apply to those parts of the EU where the disease is not established, to keep them free. These areas are designated as Protected Zones, where surveillance is undertaken to check for disease presence and where enhanced movement requirements apply to host material (including sweet chestnut wood), to provide additional assurance that such material is not diseased when moved into such areas.
- 4.2 Unlike areas where the disease is present, the Directive requires official action to be taken to eradicate outbreaks which occur in Protected Zones, to maintain disease freedom. The Directive does not set out how eradication must be pursued, but movement restrictions are an important element of any programme to pursue eradication and, to be effective, these need to cover all material which is potentially diseased (i.e. all host material which is in close proximity to an outbreak site), in addition to material which is confirmed to be infected with the disease.

- 4.3 The UK has Protected Zone status for this organism and this instrument will supplement the EU requirements in place, by imposing movement restrictions to prevent the movement of all at-risk material.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
5.2 The territorial application of this instrument is England.

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 This instrument introduces specific measures for the control in England of the harmful organism *Cryphonectria parasitica* (Murrill) Barr, a fungal disease causing sweet chestnut blight, as part of the emergency response to outbreaks of the disease in Devon and Dorset. It contains measures to be taken in order to prevent spread within England of this disease of sweet chestnut trees.
- 7.2 There are approximately 28,900 hectares of sweet chestnut in woodlands in Great Britain. The great majority (28,500ha) is in England, and this represents just over 2% of all tree cover in England's woodland. Sweet chestnut blight is a serious threat and is not established in the UK. Urgent action is required to stop the pest from spreading and to minimise the impact of any subsequent eradication measures.
- 7.3 The chestnut timber industry is also locally significant in parts of England. Most sweet chestnut trees are located in southern England and there would be significant regional and local impacts in the event the disease was allowed to spread.
- 7.4 A key element of the strategy in response to an outbreak, as per the Contingency Plan for sweet chestnut blight, is to restrict movement of susceptible material from and within outbreak areas to prevent potential spread of the disease.
- 7.5 The instrument makes provision for outbreak areas (infested zones and controlled zones) to be demarcated by Notices approved by the Secretary of State and Forestry Commissioners. This provides transparency about the area to be regulated. It also describes the movement restrictions to apply to susceptible material (oak and sweet chestnut) in relation to an outbreak area, ensuring that they apply to all relevant individuals and businesses (i.e. those with sweet chestnut or oak trees or wood on their property or in their possession).
- 7.6 Sweet chestnut is the only host species known to be seriously impacted by the disease, with chronic infections resulting in the decline and death of trees. The movement restrictions will, however, also apply to oak (*Quercus spp.*) as the disease has been reported to infect certain species of oak. Although reports suggest that oaks tend to suffer from superficial damage only in most cases, infected oak trees may facilitate the spread of the disease and a restriction on movements of oak material is therefore considered to be necessary as a precaution whilst further evidence is collected to obtain a better understanding of the role of oak in the spread of the disease.

- 7.7 In the longer-term, taking action now should help protect trade and industry in the UK, and wider environment against the damaging impacts of wider spread. Provision is made within the Order enabling plant health inspectors to authorise movements of susceptible material where this is appropriate and this can be achieved without risking the spread of sweet chestnut blight.

Consolidation

- 7.8 This is not a consolidation.

8. Consultation outcome

- 8.1 This instrument introduces emergency measures in response to an outbreak, whilst there has not been sufficient time to formally consult at a local level; discussions with some stakeholders have taken place to outline the intention to introduce the measures. In addition, the Forestry Commission consulted industry stakeholder groups on its Contingency Plan for sweet chestnut blight in October and November 2015. The draft and published version of contingency plan outlined the requirements being incorporated into the instrument).

9. Guidance

- 9.1 The Forestry Commission contingency plan which sets out the measures to be taken in the event of an outbreak is available at [http://www.forestry.gov.uk/pdf/Sweet-chestnut-blight-draft-contingency-plan_Final-draft-for-PHRG-v2-CC_09-03-16.pdf/\\$FILE/Sweet-chestnut-blight-draft-contingency-plan_Final-draft-for-PHRG-v2-CC_09-03-16.pdf](http://www.forestry.gov.uk/pdf/Sweet-chestnut-blight-draft-contingency-plan_Final-draft-for-PHRG-v2-CC_09-03-16.pdf/$FILE/Sweet-chestnut-blight-draft-contingency-plan_Final-draft-for-PHRG-v2-CC_09-03-16.pdf). Further guidance and information is available on the Forestry Commission website. Specific communications materials have been prepared to publicise the notice - those likely to be affected will be informed of the instrument via website guidance, local publicity and directly via Forestry Commission and APHA inspectors.

10. Impact

- 10.1 Sweet chestnut blight has the potential, if it becomes established, to cause significant damage to our stocks of sweet chestnut trees, which provide a range of commercial, environmental and social benefits across the country (estimated to be valued at over £40m each year).
- 10.2 In the short term placing movement restrictions on sweet chestnut trees within outbreak areas is expected to only impact on local landowners/businesses. Any impact of movement restrictions (that would be likely to affect short term sales and profits) is considered to be relatively low and outweighed by the important value (i.e. businesses' profits as well the wider enjoyment of nature) that is protected in the longer-term.
- 10.3 There is no impact on the public sector. The Forestry Commission and APHA are the relevant delivery bodies, who already carry out surveillance and monitoring in the context of protecting England from sweet chestnut blight.
- 10.4 An Impact Assessment has not been prepared for this instrument due to the emergency nature of this issue.

11. Regulating small business

- 11.1 The 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 The legislation applies equally to all businesses involved with susceptible material, including small businesses. The risk of moving harmful organisms is not mitigated by the size of the business. For all businesses there is the possibility for inspectors to authorise movements where it is possible to demonstrate that this can be done without the risk of moving the disease.

12. Monitoring & review

- 12.1 The instrument includes a review clause (5 years) but actions in response to outbreaks of sweet chestnut blight will be reviewed on a frequent basis to determine in further changes are needed.

13. Contact

- 13.1 Andrea Deol at the Department for Environment, Food and Rural Affairs Telephone: 02080262715 or email: andrea.deol@defra.gsi.gov.uk can answer any queries regarding the instrument.