

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (ENGLAND) (AMENDMENT) (NO.3) ORDER 2018
2018 No. 910

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.

2. Purpose of the instrument

- 2.1 This instrument amends the Plant Health (England) Order 2015 (S.I. 2015 No. 610) (“the principal Order”) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It 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 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 EU¹ (“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 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation to the principal Order operates in Scotland, Wales and Northern Ireland.

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

- 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 status. That means that oak trees being moved into the UK protected zone from other parts of the EU and from the infested area including and 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.
- 6.3 National legislation to strengthen import requirements for oak trees to protect against OPM is to be introduced through this instrument, which comes into force on 21st August 2018.

7. Policy background

What is being done and why

- 7.1 A recent interception of OPM on oak trees supplied from the Netherlands has highlighted that current import controls for oak trees need to be strengthened. To combat the threat national legislation is to be introduced in late-August, before the main 2018 import season, while steps are taken to strengthen the requirements in EU legislation, which would not apply until 2019.
- 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 this status. 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.
- 7.4 The recent interception on oak trees supplied from the Netherlands follows a similar one in 2016. Prior to that there have been five other interceptions on imported oak trees going back to 2006. In all cases official action was taken to prevent establishment. The 2016 interception involved a third party supplier, which calls into question the effectiveness of controls and sourcing on the despatching nursery. These interceptions highlight that the current EU import requirements are not preventing infested trees being sent to the UK. As a mobile pest undetected incursions can result in a significant risk of spread and establishment. Even a single case can result in significant spread if not caught early. Oak is a priority tree species to protect, with Action Oak being launched recently.
- 7.5 We are therefore intending to strengthen import and movement requirements for oak trees, to minimise the risk of further incursions by requiring that trees must be grown in areas free from OPM, or on a site with complete physical protection against the introduction of the pest, or on a pest free nursery where the premises and its vicinity as well as oak trees on the site are officially inspected at appropriate times before movement and found to be free from the pest. Most oak tree imports are from within the EU, but the new requirements would apply to both third country and EU imports,

as well as to movements from the infested area around London into the protected zone. We are also pressing for such requirements to be included in a current package of EU legislation changes being developed by the European Commission. However, such changes would only take effect from 2019.

- 7.6 The measures which will take from 21st August will provide protection for the main 2018 import season, which picks up from September. This will allow us to work collaboratively with the sector on implementation and ensure we get the messaging right, including not sending a negative signal about oak more generally (particularly in urban areas).
- 7.7 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. This is 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, and our inspections of traded oak trees (involving hundreds of inspections) have never detected evidence of OPM presence 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.
- 7.8 Imported oak trees are already subject to a statutory notification scheme and targeted inspections but increased official monitoring and inspections will be needed of around 30 UK nurseries outside the UK protected zone which could wish to move oak trees into that zone. They will need to meet the same requirements as nurseries in other countries where OPM is present wishing to export to the UK protected zone. Just under 1/3 of notified consignments were inspected in 2017-18 by APHA (>700 consignments) and such inspections provide some additional protection against further findings.

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 as this is the fifth instrument to amend the principal Order.

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 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 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 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) 2016/20312) 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, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@defra.gsi.gov.uk can answer any queries regarding this instrument.
- 15.2 Nicola Spence at Defra can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner at Defra can confirm that this Explanatory Memorandum meets the required standard.

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