

SL(5)390 – The Plant Health (Forestry) (Amendment) (Wales) Order 2019

Background and Purpose

This Order applies in relation to Wales certain provisions which have been made amending the Plant Health (Forestry) Order 2005 (“the 2005 Order”) in relation to England and Scotland.

Those amending instruments implemented in relation to England and Scotland certain provisions including Commission Directive 2002/757/EC and Commission Implementing Decisions 2014/690/EU, 2015/789/EU, 2015/893/EU, 2012/535/EU, 2015/2416/EU and 2017/2014 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).

In addition, it introduces a new provision to allow the disclosure of information for the purposes of the 2005 Order from HM Revenue and Customs (HMRC) to the Welsh Ministers.

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

Moreover, this Order 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)).

Procedure

Negative

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 6(a) of this Order amends article 21(1) of the 2005 Order to make reference to article 18(3) of the same Order. However, article 18(3) of the 2005 Order only applies in relation to England and Scotland, and it is therefore unclear as to why article 21(1) of the 2005 Order would refer to article 18(3) of the same Order in relation to Wales.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 7(b) of this Order inserts a new paragraph (1B) into article 40 of the 2005 Order in relation to Wales. However, it then applies the new paragraph (1B) in relation to England and Scotland, replacing the current paragraph (1B) that applies to them. Though this does not seem to have an adverse legal effect, as the instrument is limited in application to Wales, the paragraph appears to be unworkable.



3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 15(b) of this Order substitutes wording in Part A of Schedule 4 to the 2005 Order relating to item 10A, removing a reference to Decision (EU) 2015/2416. However, article 15(c) of this Order then substitutes item 10A in Part A of Schedule 4 to the 2005 Order in its entirety, while leaving in the reference to Decision (EU) 2015/2416. Therefore, articles 15(b) and (c) of this Order are contradictory.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Article 20(b) of this Order substitutes wording in paragraph 3(a)(ii) in Part B of Schedule 6 to the 2005 Order. However, the exact same wording already appears to be in force in relation to Wales. While this does not cause an adverse legal effect, the inclusion of article 20(b) appears to be unnecessary.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

After the UK exits the European Union, this instrument will form part of retained EU law.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

20 March 2019

