

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Plant Health (Wales) (Amendment) (No. 2) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Wales) (Amendment) (No. 2) Order 2019.

Rt Hon Mark Drakeford AM
First Minister of Wales
25 July 2019

PART 1

1. Description

This instrument amends the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W. 223) which contains measures to prevent the introduction and spread of harmful plant pests and diseases.

It implements control measures to minimise the risk of the introduction into and spread of *Thaumetopoea processionea* (Oak Processionary Moth (OPM)) in Wales.

This instrument is necessary to ensure consistent plant health requirements within Great Britain, to maintain consistent biosecurity measures and ensure that the Welsh Ministers are able to apply the required prohibitions.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

To ensure controls that are aligned with the rest of Great Britain it has become necessary to breach the 21 day rule. Scotland laid an equivalent statutory instrument on the 12th July and it came into force on the 16th of July. England laid an equivalent statutory instrument on the 15th July and it came into force on the same day.

Currently imports of certain plants of *Quercus* L., from regions where this pest is present are allowed in accordance with certain controls. However, findings in the wider environment in England and Wales have proved that these controls are not sufficient. It is therefore necessary to introduce strengthened controls to reduce the risk of OPM being introduced and spread in Wales from imported oak plants.

3. Legislative background

The Plant Health (Wales) (Amendment) (No. 2) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967. Section 1 of the Plant Health Act 1967 provides that the Act has effect for the control of pests and diseases injurious to agricultural or horticultural crops and trees or bushes.

Section 2(1) of the 1967 Act provides that a competent authority may from time to time make such orders as it thinks expedient or called for by an EU obligation for preventing the introduction of pests into Great Britain. Section 3(1) provides a corresponding power in relation to the control of the spread of pests in Great Britain. The Welsh Ministers are the competent authority for Wales.

Section 6 of the Plant Health Act 1967 provides that this instrument is subject to the negative procedure.

4. Purpose and intended effect of the legislation

This instrument amends the Plant Health (Wales) Order 2018. A purpose of that Order is to prevent the introduction and spread of harmful plant pests and diseases. That Order 2018 is amended to take account of new and revised risk assessments, pest interceptions, changes in the distribution of pests and other developments.

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 long term decline of oak trees in several countries. Contact with the hairs of the caterpillars can also cause extreme irritation for both humans and animals. The wider human health impacts of OPM can lead to school closures and closures of public places for recreation.

Recent interceptions of OPM on planted oak trees imported from the Netherlands have highlighted that current controls are not preventing the arrival of infested trees into the UK. As the pest is highly mobile, any undetected incursions carry a significant risk of spread and establishment if not caught early.

This instrument implements stricter technical requirements that must be satisfied when bringing certain plants of *Quercus* L., into or moving within Wales. These measures will strengthen the import and movement requirements for oak plants, to minimise the risk of further introduction or spread of OPM.

This instrument aligns the law relating to plant health in Wales with plant health in England and Scotland.

It is necessary for the Minister to breach the 21 day laying rule due to the urgency and necessity of aligning legislation in Wales with the rest of Great Britain.

5. Consultation

No consultation was required. We have engaged with the UK and Scottish Governments to ensure that the changes proposed are coordinated across Great Britain. UK stakeholder groups are supportive of action to prevent introductions of OPM.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).