

# SL(5)435 – The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019

## Background and Purpose

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This Order amends the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) to introduce emergency measures to prevent—

- (a) the introduction of *Thaumetopoea processionea* L. (the Oak Processionary Moth (“OPM”)) into Wales which is recognised as a protected zone for this harmful plant pest (“the protected area”); and
- (b) the spread of this harmful plant pest within the protected area.

The Order amends the technical requirements that must be satisfied when bringing in certain plants of *Quercus* L., intended for planting, into the protected area or when moving those plants within the protected area.

## Procedure

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Negative.

## Technical Scrutiny

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No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

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Two points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument.

### **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**

1. The 21 day rule under the Statutory Instruments Act provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can occur if legislation is annulled after it has been implemented. However, in this case, the Welsh Government considers that the circumstances justify a breach of that rule.

The Explanatory Memorandum (EM) explains the reason for the breach of the 21 day rule at page 2:

*“...To ensure continued enforceability with the rest of the UK it has become necessary to breach the 21 day rule. Scotland laid their equivalent Statutory Instrument on the 15<sup>th</sup> July and it came into force on the 16<sup>th</sup> of July. England laid their Statutory Instrument on the 15<sup>th</sup> July which came into force on the same day.*

*Currently imports of oak trees from regions where this pest is present are allowed under certain surveillance and regulations, however, findings in the wider environment in England and Wales have proved that these regulations are not sufficient and as a result a number of OPM findings have been reported outside of London across England and Wales. It is therefore necessary to immediately stop all potentially infested imports of Oak trees as soon as possible to reduce the potential spread of OPM throughout the UK...”*



The EM further states at page 3 that:

*"...The 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)).*

*It is necessary for the Minister to breach the 21 day laying rule due to the urgency needed to bring Welsh Government legislation in line with the rest of Great Britain. If not Wales will be a loophole in Plant trade and could still allow the importation of potentially infested material.*

*The earliest the Moths have been recorded flying in the UK is from 24 July and we need the ability to restrict potential plant trade pathways to minimise the spread and impact of this pest in Wales..."*

The Minister for Finance and Trefnydd has, as required by section 11A of the Statutory Instruments Act 1946, notified the Presiding Officer of the breach, by way of a letter dated 19 July 2019.

2. The letter notifying the Presiding Officer of the breach of the 21 day rule on the one hand, and the Explanatory Notes and Explanatory Memorandum accompanying the Regulations on the other, provide different reasoning as to why a Regulatory Impact Assessment (RIA) has not been undertaken. The letter states as follows:

*"...No Regulatory Impact Assessment or Consultation has been undertaken due to the urgency of implementing the Statutory Instrument. However, an Explanatory Memorandum has been prepared and this has been laid, together with the Regulations in Table Office..."*

However, the Explanatory Notes to the Regulations state that *"an impact assessment has not been produced for the instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen"*. Likewise, the Explanatory Memorandum states at page 4 that *"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"*.

As such, it is unclear exactly why an RIA was not undertaken on this occasion, as the reasoning provided is contradictory.

## Implications arising from exiting the European Union

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

## Government Response

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It is accepted that the differing reasons given for not carrying out an RIA make it difficult to determine the exact reasoning.

In the circumstances the primary reason was the emergency nature of the Order justified under para. 4.2 of the Code of Practice and as set out in the letter to the presiding officer.

In reality given that this was limited to a restriction on a single kind of tree being imported from a very limited and specific source there was no significant impact on the private, voluntary or public sector.

It is accepted, however, that the primary reasoning is unclear on the face of the Order and that it should be made clear.



This order becomes otiose on 'exit day' as Schedule 4 of the Plant Health (Forestry) Order 2005 is omitted by virtue of Article 52 of The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

In the circumstances it is proposed that the Explanatory Note will be corrected by way of a correction slip only if this point is still relevant after 31st October 2019.

