

Explanatory Memorandum for subordinate legislation

Explanatory Memorandum to the Plant Health (Wales) (Amendment) (No. 3) 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. 3) Order 2019.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

26 September 2019

PART 1

1. Description

The Plant Health (Wales) (Amendment) (No. 3) Order 2019 (“this instrument”) amends the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W. 223) (“2018 Order”) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. This instrument implements control measures to minimise the risk of the introduction into and spread of various pests and diseases into Wales.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The Plant Health (Wales) (Amendment) (No. 3) Order 2019 is being made pursuant to the powers in the Plant Health Act 1967 and paragraph 1A of Schedule 2 to the European Communities Act 1972.

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 pursuant to section 1(2) of the Act as amended by the Natural Resources Body for Wales (Functions) Order 2013.

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 EU (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in Wales by the 2018 Order. Similar but separate legislation operates in Scotland, England and Northern Ireland.

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

4. Purpose and intended effect of the legislation

This instrument amends the 2018 Order. A purpose of that Order is to prevent the introduction and spread of harmful plant pests and diseases. The 2018

Order is amended to take account of new and revised risk assessments, pest interceptions, changes in the distribution of pests and other developments.

This instrument amends the 2018 Order to implement—

- Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith) (OJ No. L 105, 25.4.2018, p. 31);
- Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann) (OJ No. L 254, 10.10.2018, p. 9);
- Commission Implementing Decision (EU) 2019/449 amending Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa (OJ No. L 77, 20.3.2019, p. 76); and
- Commission Implementing Directive (EU) 2019/523 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L 86, 28.3.2019, p. 41).

This instrument amends the 2018 Order to ensure that the following EU instruments are correctly implemented—

- Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand (OJ No. L 27, 3.2.1998, p. 47);
- Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus (OJ No. L 64, 2.3.2004, p. 43).

This instrument also removes provisions in the 2018 Order relating to Commission Implementing Decision (EU) 2014/237 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India and Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana, which are no longer in force.

Rosa Rosette Virus

This instrument introduces emergency measures to prevent the introduction of Rose rosette virus and its vector *Phyllocoptes fructiphilus* (Keifer 1940).

All species and cultivars of *Rosa* are considered at risk from *Rose rosette virus* (RRV) and its vector, *P. fructiphilus*, as no known tolerant or resistant species or varieties have been identified. The virus causes witches' broom, flower

abortion or flower malformation, distorted leaf growth and reduction in cold hardiness, leading to mortality of roses. RRV is absent from the UK.

RRV is known to be present in parts of the Canada and the USA, where it has had high economic and social impacts. There is an unconfirmed report of the pest in Mexico and it has recently been reported in West Bengal, India. If the virus and its vector were to be introduced into the European and Mediterranean Plant Protection Organisation (EPPO) region, which includes the UK, the potential impacts are also likely to be high. All species and cultivars of *Rosa* would be at risk because no plant resistance has been identified.

Following on from a UK pest risk analysis (PRA) produced in 2016, an EPPO Expert working group (EWG) was set up in 2017 to produce an EPPO PRA for Rose rosette virus and its vector *Phyllocoptes fructiphilus*. The EWG considers RRV to be a high risk to the EPPO region. *P. fructiphilus* is considered to be a potential pest for the EPPO region, as a vector of RRV and possibly through direct feeding damage. Both RRV and *P. fructiphilus* have been added to the EPPO A1 list and are therefore recommended for regulation in EPPO countries.

The likelihood of establishment in the EPPO region is considered very high. If introduced, the magnitude of spread would be moderate to high, due to the extensive trade in *Rosa* and because of the aerial dispersal of *P. fructiphilus*, with a moderate uncertainty.

Both plants for planting and cut flowers of *Rosa* sp. are considered to be pathways for introduction of the pest. Of major concern is that the EPPO PRA assesses the risk of entry of RRV (and its vector) into the EPPO region to be high on *Rosa* plants for planting. This is the case for the UK because current measures do not significantly reduce the probability of entry. Plants of *Rosa*, intended for planting, other than dormant plants free from leaves, flowers and fruit from non-European countries are prohibited. This is, however, not effective in preventing entry, because both RRV and its vector can be associated with dormant plants. Industry is exploring new sources of planting material and this could include areas where RRV is present. Once introduced virus spread would be rapid and eradication very difficult to achieve. Early regulation is therefore vital to help prevent the introduction of this very damaging virus and its vector.

The UK Government has written to the European Commission asking that, as RRV and its vector represents a major threat to the EU, it should be treated as a high priority for regulation by the EU. Regulation of these pests is being considered by the EU. In the meantime, national measures are being introduced to protect against the introduction of the virus. This involves adding RRV and its vector to the list of prohibited pests and introducing a requirement that host material (*Rosa* sp, including plants for planting, cut flowers and tissue culture.) originating in countries where the pest is known to be present (Canada, India, Mexico and the USA) have been grown in an area free from the pest.

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

5. Consultation

No consultation was required.

The changes which have been adopted which modify the annexes of the Plant Health Directive, reflect those already in place at the EU level, which have been published by the European Commission.

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).