

**Explanatory Memorandum to the
Plant Health (Forestry) (Amendment) (Wales) Order 2015**

This Explanatory Memorandum has been prepared by the Forestry Policy Team within the Natural Resources Department 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 (Forestry) (Amendment) (Wales) Order 2015

Carl Sargeant
Minister for Natural Resources
24 September 2015

1. Description

This Order amends, in relation to Wales, the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) (“the principal Order”), which contains measures to prevent the introduction and spread of harmful tree pests and diseases. It implements Commission Implementing Directives 2014/78/EU and 2014/83/EU and Commission Implementing Decision 2012/138/EU.

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

The principal Order extends to England and Wales, and Scotland. It has been amended on two occasions (in 2013 and 2014) by instruments which apply in relation to England and Scotland only. The amendments now being made to the principal Order in relation to Wales are identical to the existing amendments made in relation to England and Scotland. In drafting terms, rather than repeating the existing amendments in relation to Wales, we have taken the approach of applying the existing amendments to Wales. The Plant Health (Forestry) (Amendment) (Wales) Order 2015, therefore, makes the amendments which have already been made in relation to England and Scotland, apply also in relation to Wales.

3. Legislative background

The plant health regime of the European Union is established by Council Directive 2000/29/EC on protective measures against the introduction into the European Union of organisms harmful to plants or plant products and against their spread within the EU¹ (“the Plant Health Directive”). The Plant Health Directive is implemented in Great Britain for forestry matters by the principal Order. Similar but separate legislation implements the Plant Health Directive for non-forestry matters in England, Scotland and Wales.

The principal Order was made by the Forestry Commissioners as competent authority for the protection of forest trees and timber from attack by pests in exercise of the powers conferred on them by sections 2 and 3 of the Plant Health Act 1967 (1967 c.8) (“the Act”). The Welsh Ministers, as regards forest trees and timber, are now the competent authority in relation to Wales for the purposes of the Act. That function was transferred from the Forestry Commissioners to the Welsh Ministers with effect from 1 April 2013 by Article 4 of and paragraph 43 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W.90)). The delay in developing the necessary amendments to the Order in Wales, in comparison with England and Scotland, stem from a combination of the transfer of the power to make regulations under the Plant Health Act 1967 with regard to tree health in relation to Wales from the Forestry Commissioners to the Welsh Ministers, on the establishment of Natural Resources Wales, and work on other priorities, in particular the Environment (Wales) Bill.

As competent authority, the Welsh Ministers can amend the principal Order if they think that it is expedient to do so in order to prevent the introduction and spread of pests in Wales, pursuant to section 2(1) and 3(1) of the Act.

In accordance with section 6(1) of the Act, this Order will follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

The Plant Health Directive is amended from time to time to take account of new and revised risk assessments, pest interceptions, changes in the distribution of pests and other developments. A number of EU instruments have been adopted which modify the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address risks presented by other pests and

¹ The Directive can be found at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0029>

diseases. This Order implements those changes by amending the principal Order in relation to Wales.

The Plant Health Directive is amended to establish the UK as a protected zone (areas that are free from plant pests usually established elsewhere in the EU) for Chestnut gall wasp (*Dryocosmus kuriphilus* Yasumatsu), Oak processionary moth (*Thaumtopoea processionea* L), Sweet chestnut blight (*Cryphonectria parasitica*) and Plane wilt (*Ceratocystis platani* (J.M.Walter) Engelbr. & T.C. Harr), requiring that plants and plant produce that are hosts of these pests must reach higher plant health standards before entering these zones. This is in line with UK policy objectives. The Report of the Tree Health and Plant Biosecurity Expert Taskforce published in May 2013 recommended that biosecurity should be strengthened to reduce risks at the border and within the UK, through measures including timely consideration of EU Protected Zone status to protect against new threats before they arrive. Strengthening of protection against Chestnut gall wasp, Oak processionary moth, Sweet chestnut blight and Plane wilt was identified as a priority during development of a UK plant health risk register, which was one of the recommendations arising from the Task Force. Creation of EU protected zones for Sweet chestnut blight and Plane wilt replace the existing national measures against these pests.

Bronze birch borer (*Agrilus anxius*) is added as a new pest and new landing requirements are introduced for trees and wood of birch from Canada and the USA. New strengthened measures are introduced in respect of the Emerald ash borer (*Agrilus planipennis*) and the pinewood nematode (*Bursaphelenchus xylophilus*).

The requirements for wood packaging from outside of the EU are amended to make those for material in use the same as those for material not in use. These also apply to the wood which is used to wedge or support cargo (dunnage), although an exception is made for dunnage which is associated with controlled timber consignments and which is constructed from wood of the same type and quality as the wood in the consignment and meets the same EU phytosanitary requirements as the wood in the consignment.

The requirements for heat treatment of conifer wood from outside of the EU are strengthened. This wood must be heat-treated to achieve a minimum temperature of 56° C for a minimum duration of 30 continuous minutes throughout the entire profile of the wood (including at its core).

Strengthened measures are introduced to prevent the introduction into and spread within the European Union of *Anoplophora chinensis* (Citrus longhorn beetle).

The Order provides for references in the principal Order to Commission Implementing Decision 2012/138/EU and Commission Regulation (EC) No. 690/2008 to be read as references to that Decision and that Regulation as amended from time to time.

5. Consultation outcome

This Order implements EU legislation. The views of stakeholders were sought and taken into account during negotiations with the Commission and other Member States.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment undertaken as the amendments to the principal Order are technical changes only. There is no impact on charities or voluntary bodies foreseen or on the public sector.