

SL(5)374 – The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

Council Directive 2000/29/EC (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce.

These Regulations correct deficiencies in the following domestic legislation which implements EU Directive 2000/29/EC on measures to protect (forestry) plant health arising in consequence of the UK’s withdrawal from the EU in a ‘no deal’ scenario:

- Plant Health (Forestry) Order 2005
- Forest Reproductive Material (Great Britain) Regulations 2002
- Plant Health (Fees) (Forestry) (Wales) Regulations 2019

Procedure

Affirmative.

Technical Scrutiny

The following 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.

- The preamble to these Regulations does not correctly cite the enabling powers. The first power cited is Section 8(1) of the European Union (Withdrawal) Act 2018 which is a Secretary of State power, the citation is therefore incorrect. The second power cited is Schedule 2 to the European Union (Withdrawal) Act 2018, however for the sake of clarity this citation should be more precise in referencing the specific power within that Schedule.

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

- In the words preceding Regulation 2, “Material” has been left out of the reference to the Forest Reproductive *Material* (Great Britain) Regulations 2002 [*emphasis added*].

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

- Regulation 4(a) of these Regulations revokes the definitions of “solid fuel wood” and “OPM protected zone” from Article 2(1) of the Plant Health (Forestry) Order 2005. However, these terms only apply in relation to England and Scotland (they were inserted into the 2005 Order by the



Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016 and the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2018 respectively).

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

- Regulation 4(e) of these Regulations revokes Article 2(5) of the Plant Health (Forestry) Order 2005. However, paragraph (5) only applies in relation to England and Scotland (it was inserted into the 2005 Order by the Plant Health (Forestry) (Amendment) (England and Scotland) Order 2016).

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

- In Regulation 18(c) there should be an “or” included as part of the words being inserted. The wording of the Regulation should read “in paragraph (B1)(a) *or*” [*emphasis added*].

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

- Regulation 30 contains two references to Article 6(1) of the Plant Health (Forestry) Order 2005. However, Article 6(1) is revoked by Regulation 10(c) of these Regulations. It is therefore not clear which provision is being referred to.

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

- Regulation 30 contains two references to Article 12(1) of the Plant Health (Forestry) Order 2005. However, Article 12(1) is revoked by Regulation 18(b) of these Regulations. It is therefore not clear which provision is being referred to.

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

- Regulation 50(b) contains a typographical error. The second line should start with “place” rather than “pace”.

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

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

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

13 March 2019

