

Government Response: The Plant Health (Forestry) (Amendment) (Wales) Order 2019

Technical Scrutiny point 1 : The reference to Art 18(3) of the 2005 order is an error. The offending provision is a remnant from an earlier draft which should have been removed as Art 18(3) does not apply in Wales. The whole of article 18 and this reference to article 18(3) in Art 21 will be omitted by the EU Exit SI which is due to come into force on exit day (currently anticipated to be 29th March 2019). This error does not cause a legal issue but if it is to persist because exit day is delayed for a significant period it will be amended to avoid confusion.

Technical Scrutiny point 2 : it had been intended to amend the text, but not the legal effect, of some of the provisions of the 2005 order in relation to England, Scotland and Wales in order to achieve textual alignment. This intention was abandoned but has led to the erroneous inclusion of the reference noted which attempts to replace paragraph (1B) of article 40 as it applies in England and Scotland. We do not consider this to be ultra vires as the application of this SI is specifically limited to Wales by virtue of Art 1(2) and so the offending paragraph is simply unworkable. If this remains it could cause confusion and so it will be amended at the earliest opportunity.

Technical Scrutiny point 3 : Art 15 (b) is redundant and will be removed. The inserted item 10A column 3, should contain the new reference. This whole schedule will however be removed by the EU Exit SI which is due to come into force on exit day. If it is to persist for a lengthy period because exit day is delayed it will be amended at the earliest opportunity.

Technical Scrutiny point 4 : the provision was replaced in order to insert a full stop before the comma. It transpires, however, that the two key versions of the 2005 Order on Westlaw and Legislation.gov include said full stop. This provision therefore replaces itself without making any legal change or changing the intended effect and so we do not propose to take any action.