EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (*IPS TYPOGRAPHUS*) (ENGLAND) ORDER 2019

2019 No. 40

1. Introduction

1.1 This explanatory memorandum has been prepared by the Forestry Commissioners and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument introduces emergency measures in response to outbreaks of *Ips typographus* (Heer) (larger eight-toothed spruce bark beetle), a serious pest of conifer trees. It provides for the demarcation of an area around any confirmed infestation of the pest and the prohibition on the movement of susceptible material from or within a demarcated area.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The emergency measures against the pest *Ips typographus* come into force at 16.00 on 16 January 2019 in breach of the rule requiring instruments to be laid at least 21 days before they come into effect, as action is needed urgently to control the outbreak and prevent the pest from spreading. On 6 December 2018, two outbreak sites (adjacent woodlands) were confirmed in the county of Kent. Extensive surveillance of susceptible conifer trees is being carried out around the outbreak sites to look for presence of the pest in the wider environment (involving ground survey of all susceptible trees up to 1km from the infested trees and an aerial and follow-up ground surveys up to 100km). Urgent action is necessary to restrict the movement of susceptible conifer material from or within an area surrounding and encompassing the infested site, due to the risk of spreading the pest. This is a significant risk as the beetle, which is not established in the UK, hibernates under the bark of infested trees or logs overwinter, so material can be moved without visual signs of infestation being observed. As the adult beetles will re-emerge in spring, if infested material (including conifer plants greater than three metres in height, timber, firewood, isolated bark etc.) is moved there is clear risk of spread of the pest and new satellite outbreaks establishing elsewhere in the UK from early spring onwards.

3.2 As part of the immediate response to the outbreaks, and as an interim measure, a limited number of Statutory Plant Health Notices (SPHN's) to impose movement restrictions have been served on the landowners and businesses affected by, or in close proximity to, the outbreak, using general plant health powers under the Plant Health (Forestry) Order 2005. However, this provides only limited protection as there are likely to be more businesses and individuals in the vicinity of the outbreak area and the surrounding area where conifers are present and it is not feasible to issue individual SPHN's on all these premises. To ensure that the risk of spread of the pest is minimised, it is necessary to demarcate a wider area and extend movement

restrictions to the movement of susceptible conifer material out of or within this area. This instrument will ensure that the Forestry Commissioners will be able, by notice, to demarcate appropriate areas around the outbreak sites and any other sites which are subsequently found to be infested with the pest, and impose appropriate movement restrictions on conifer material which is capable of spreading the pest.

3.3 The first notice to be issued by the Forestry Commissioners will come into force on 21 January 2019 and will apply to the movement of spruce (*Picea*) material within *ca.* a 50km radius of the outbreak site.

3.4 Further notices will be issued under the Order as and when needed, outlining additional demarcated areas (divided into infested and controlled zones as required) and the conifer material (species and type) to be covered.

3.5 Local level engagement is underway to publicise the intention to introduce movement restrictions. A communications plan is in place as part of the response to the *Ips typographus* outbreak. As part of this, specific communications materials have been developed to support the implementation of the Order and to publicise the notice. Those likely to be affected will be informed of the instrument via website guidance, local publicity and directly via Forestry Commission and Animal and Plant Health (APHA) inspectors.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.6 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 *Ips typographus* (Heer) is currently regulated as a quarantine pest under Schedule 2 of the Plant Health (Forestry) Order 2005. Under Directive 2000/29/EC ("the Directive"), all of the UK has Protected Zone status for this pest meaning that the wood of conifers, the isolated bark of conifers and certain conifer trees may only be landed or moved within Great Britain if special requirements are satisfied to ensure freedom from the pest. Equivalent requirements apply in Northern Ireland. Surveillance is undertaken to check for pest presence to provide additional assurance that such material is not infested when moved into the Protected Zone.

6.2 Unlike areas where the pest is present, the Directive requires official action to be taken to eradicate outbreaks which occur in Protected Zones, to maintain pest freedom and Protected Zone status. The Directive does not set out how eradication must be pursued, but movement restrictions are an important element of any programme to

pursue eradication and, to be effective, these need to cover all material which is potentially infested.

6.3 This instrument will supplement the Protected Zone requirements, by imposing movement restrictions to prevent the movement of 'at-risk' material.

7. Policy background

What is being done and why?

7.1 This instrument introduces specific measures for the control in England of the harmful pest *Ips typographus*, as part of the emergency response to outbreaks of the pest in Kent. *Ips typographus* is the most serious and destructive European pest of spruce species. Spruce is the most common conifer species in UK woodlands and this pest is a critical threat to UK forestry. The pest could cause major damage and extensive tree mortality. The pest would be impossible to eradicate if allowed to establish.

7.2 Urgent action is required to stop the pest from spreading and to minimise the impact of any subsequent eradication measures. This action is considered to be vital to protect UK woodlands from major damage and loss. The loss of spruce would be devastating to the UK forestry sector and have a negative impact on the commercial, environmental and social benefits it provides.

7.3 There is a national contingency plan for *Ips typographus*. The plan describes the response strategy for either eradicating or containing an outbreak of this pest, including the establishment of a statutory regulated area as soon as possible after the discovery of an outbreak to reduce the risk of spreading the pest. This is a significant risk as the pest can be difficult to detect so can be moved even if visual symptoms are not observed.

7.4 The instrument makes provision for a demarcated area (including infested and controlled areas as appropriate), to be defined by notices issued by Forestry Commissioners. This provides transparency about the area to be regulated. The purpose of the Order is to provide the flexibility to introduce movement restrictions on different categories of conifer materials (including any trees over three metres in height, wood with bark or isolated bark) to prevent the spread of *Ips typographus*. The pest is attracted to more mature trees, hence the focus on trees over three metres in height. A risk based approach will be taken with the specific category of conifer material, including the conifer species to be restricted, which will be specified in notices issued under the Order.

7.5 In the longer-term, taking action now should help protect trade and industry in the UK, and the wider environment, against the damaging impacts of further spread of this pest. Provision is made within the Order enabling plant health inspectors to authorise movements of susceptible material where this is appropriate and this can be achieved without risking the spread of *Ips typographus*.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

10.1 This instrument introduces emergency measures in response to an outbreak, but discussions with some key stakeholders have taken place to outline the intention to introduce the measures and there have been discussions with affected parties at a local level. In addition, the Forestry Commission consulted relevant officials in Defra and the Devolved Administrations during the preparation of its Contingency Plan for *Ips typographus* in 2015. The draft and published version of the Contingency Plan outlined the requirements which have provided the basis for those being incorporated into the instrument.

11. Guidance

11.1 The Forestry Commission Contingency Plan, which sets out the measures to be taken in the event of an outbreak, is available at https://www.forestry.gov.uk/pdf/Ips-typographus_contingency-plan.pdf/$FILE/Ips-typographus_contingency-plan.pdf. Further information is available on the Forestry Commission website. Specific guidance and communications materials about the measures will be published at the time of laying - those likely to be affected will be informed of the instrument via website guidance, local publicity and directly via Forestry Commission and APHA inspectors.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies. *Ips typographus* has the potential, if it becomes established, to cause significant damage to conifers, which provide a range of commercial, environmental and social benefits across the country. This action is considered to be vital to protect UK woodlands from major damage and loss. Spruce is the most common conifer species in woodlands and its loss would be devastating to the UK forestry sector. The total value of Sitka spruce to the UK forestry sector is estimated at around £240 million each year (based on information from Forestry Statistics publications).

12.2 In the short term, placing movement restrictions within outbreak areas is expected to only impact directly on local landowners/businesses, with costs assessed to be relatively low. Any impact of movement restrictions (that would add some additional costs to meet conditions such as debarking and vehicle cleaning before movement can continue, or could affect short term sales and profits) is considered to be outweighed by the important value (i.e. businesses' profits as well the wider enjoyment of nature) that is protected in the longer-term.

12.3 There is no impact on the public sector. The Forestry Commission and APHA are the relevant delivery bodies, who already carry out surveillance and monitoring in the context of protecting England from tree pests.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The legislation applies equally to all businesses involved with susceptible material, including small businesses. The risk of moving harmful organisms is not mitigated by the size of the business. For all businesses there is the possibility for inspectors to authorise movements where it is possible to demonstrate that this can be done without the risk of moving the pest.

14. Monitoring & review

14.1 Forestry Commission will review action taken in response to outbreaks of *Ips typographus* on a frequent basis to determine if further changes are needed, including the necessity of the Order.

15. Contact

15.1 John Morgan, at the Forestry Commission, Telephone: 0300 067 5170 e-mail: john.morgan@forestrycommission.gov.uk, can be contacted with any queries regarding this instrument.

14.2 Richard Greenhous, Deputy Director for Forest Services, Forestry Commission can confirm that this Explanatory Memorandum meets the required standard.

15.2 Lord Gardiner of Kimble, Under Parliamentary Secretary of State at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.