

Explanatory Memorandum to Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
20 February 2019

PART 1

1. Description

- 1.1 The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 ('the Regulations') correct deficiencies in domestic legislation which implements EU Directive 2000/29/EC on measures to protect plant health arising in consequence of the UK's withdrawal from the EU in a 'no deal' scenario. The Regulations also transpose provisions in certain Council Directives in relation to the planting of certain *solanaceous* species and the control of relevant plant pests.
- 1.2 Parts of the Regulations come into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ('the 2018 Act') defines as 29 March 2019 at 11.00pm.

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

- 2.1 In accordance with paragraph 1(8) of Schedule 7 to the 2018 Act the Regulations are subject to the affirmative procedure as they create a criminal offence and relate to a fee in respect of a function exercisable by a public authority in the UK. The Regulations are also subject to the affirmative procedure in accordance with paragraph 2(2) of the European Communities Act 1972.

3. Legislative background

- 3.1 The Regulations are being made in exercise of the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. The Regulations are also made in exercise of the power in paragraph 21 of Schedule 7 to the 2018 Act. In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 3.2 Alongside the 2018 Act powers the Regulations are also made in exercise of powers conferred by the European Communities Act 1972. The Welsh Ministers are designated by the European Communities (Designation) (No 5) Order 2010 for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1 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. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.
- 4.2 Part of the Plant Health Directive is implemented in Wales by the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W.223). The Order sets out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, England and Northern Ireland.

Why is it being changed?

- 4.3 Under the EU single market, plant material may move freely between and within member states and between member states and Switzerland. Material which hosts the most serious pests and diseases requires an EU plant passport to facilitate its movement. The Regulations introduce changes in relation to the import of plant material from EU member states and Switzerland and the movement of such material within Wales, to ensure that the current legislation continues to operate effectively after the UK has left the EU in the event of a ‘no deal’ scenario.
- 4.4 The Regulations also make consequential minor amendments to the existing fees set out in the Plant Health etc. (Fees) (Wales) Regulations 2018 (S.I. 2018/1179) (W.238) to remove inappropriate references to EU legislation and ensure legal operability post-exit.

What will it now do?

- 4.5 The Regulations will ensure that plant health legislation in Wales, which implements current EU protective measures against the introduction and spread of organisms harmful to plants or plant products, remains effective after the UK leaves the EU in a ‘no deal’ scenario.
- 4.6 Plants and plant products currently managed under the EU plant passport regime when moving to Wales from EU member states and Switzerland (“the EU member states”) will be subject to import controls which will replace the assurance and traceability which the EU plant passport regime offers, maintaining biosecurity and border flow whilst minimising the impact on businesses. Consignments of these plants and plant products entering the UK will require a phytosanitary certificate issued in the country of export in accordance with International Plant Protection Convention obligations. However, in order to maintain the flow of goods, consignments of plants and plant products from EU member

states will not be stopped at the border. The relevant UK plant health authority will carry out documentary and identity checks for those consignments remotely, thereby ensuring future traceability of the material should that need arise. Recognising that biosecurity risks associated with EU goods do not change immediately on EU exit, physical checks will not be carried out on material imported from EU member states.

- 4.7 Under the Plant Health Directive checks on material imported from third countries are normally carried out at the first point of entry into the EU, so material arriving in Wales from a third country via the EU will already have been subject to the required plant health checks. Following the UK's exit from the EU consignments transiting the EU on their way to Wales will not be checked when they enter the EU and so will require checking on arrival in Wales. Some consignments arrive via fast moving roll-on, roll-off (Ro-Ro) ports, where stopping goods for checks at the border would create significant disruptions to the flow of traffic. Therefore, in order to ensure frictionless trade, businesses wishing to bring third country regulated goods into Wales via the EU at Ro-Ro ports will be required to facilitate plant health checks inland at their own premises. Premises will need to be authorised by the Welsh Government and provide specified inspection facilities. They will need to pre-notify arrival of such consignments to the Welsh Government and specify where the consignment will be held awaiting checks. The consignments will not be permitted to be moved from the authorised premises until the plant health authority has carried out the necessary checks.
- 4.8 The amendments outlined in paragraphs 4.6 and 4.7 are covered in Part 3, regulations 10 to 24 of the Regulations.
- 4.9 These amendments include a new offence in relation to the new import requirements described in paragraph 4.7 to provide the ability to enforce and prosecute serious cases of non-compliance.
- 4.10 In order to facilitate the monitoring of plant material moving within the UK, a system of UK plant passports is to be introduced to replace the EU plant passports required for the movement of material between and within member states under the EU single market.
- 4.11 A new criminal offence is also added to enforce any failure to comply with any requirement in a general notice issued under the Plant Health (Wales) Order 2018 in respect of a demarcated area. The provisions in EU emergency plant health decisions, which require demarcated areas to be established in the event of an outbreak, will be retained direct EU legislation. The EU decisions will require the Welsh Ministers to demarcate areas around a pest outbreak and take measures to eradicate and contain the outbreak. It has not been necessary for any demarcated areas to be established in the UK under any of the EU decisions to date, but the new powers to issue general notices in respect of any demarcated area that is established under these provisions will

ensure that the Welsh Ministers are able to meet their obligations under this retained direct EU legislation.

- 4.12 Regulations 57 to 63 (Part 4) of the Regulations also make consequential minor amendments to the existing fees set out in the Plant Health etc. (Fees) (Wales) Regulations 2018 to remove inappropriate references to EU legislation and ensure legal operability post-exit.
- 4.13 The Regulations also amend the provisions at articles 40 and 41 of the Plant Health (Wales) Order 2018 on the issue of licences for activities prohibited by the order to ensure that they remain operable after EU exit.
- 4.14 The Regulations also transpose provisions in Council Directives 69/464/EEC, 93/85/EEC, 98/57/EC and 2007/33/EC that apply to competent authorities in relation to the planting of certain *solanaceous* species and the control of relevant plant pests, so that following the UK's exit from the EU in a 'no deal' scenario, the UK will be able to demonstrate to third countries that it continues to maintain the same control over the production of potatoes. This is important in terms of any future trading arrangements the UK may enter into with third countries. These amendments are covered at Part 2, regulations 3 to 22 and the amendments relating to the deficiencies in these provisions that will arise on the UK's withdrawal from the EU, in Part 3, regulations 53 to 55.

5. Consultation

- 5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy framework to remain operable after the withdrawal of the UK from the European Union.

6. Regulatory Impact Assessment (RIA)

- 6.1 The Regulations have no major policy impact. The Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively.
- 6.2 There is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector in Wales.
- 6.3 The impact on business results from additional phytosanitary requirements when importing plants and plant products from the EU into the UK which currently require a plant passport. This is associated with the requirement to provide a certificate, pre-notify imports from the EU, undergo document and identity checks, the requirement to use UK rather than EU plant passports for intra-UK movements of plant passported commodities and third country phytosanitary certificates transiting

through the EU. These direct costs on businesses overall are expected to be negligible and could affect around 20 businesses (based on those registered for plant passporting currently in Wales) and businesses importing third country commodities via the EU.

Additional Direct Costs – on Day 1 the main additional direct costs are expected to be:

- 6.4 Requirement to provide phytosanitary certificates for regulated EU commodities imported to the UK - The administrative burden of providing the phytosanitary certificate will fall on the National Plant Protection Organisation in the member state exporting the consignment, as well as the exporter in the first instance. However, the cost associated with this is likely to be passed on to the importer and ultimately, the customer. The requirement to provide a phytosanitary certificate is expected to affect a small proportion of plants/plant products only (i.e. those where plant passports are currently required for trade deemed to have a high biosecurity risk) from total annual imports of regulated plants/plant products from the EU to the UK.
- 6.5 There may also be additional time requirements to businesses of applying for and providing the required information to get the certificate.
- 6.6 Requirement to pre-notify imports of regulated EU commodities – this will represent an additional administrative burden. Importers will need to register onto the PEACH IT system and provide consignment details and scanned copies of import documentation and phytosanitary certificates. However, there are no charges to use this system and businesses who already trade in regulated third country plants and plant products will be familiar with this process, so the additional costs are expected to be negligible.
- 6.7 Requirement to undergo documentary and identity checks on regulated EU commodities – this will represent an additional cost burden on importers, who will be subject to a fee for the checks carried out. However, the checks will take place after entry to the UK and consignments will not be held awaiting checks. This avoids an additional time-related burden on businesses. EU imports will also not be subject to, or charged for, physical checks.
- 6.8 Requirement to use UK rather than EU plant passports for intra-UK movements of plant passported commodities – this will require businesses moving plant passported commodities within the UK to modify the reference code that they use when issuing plant passports, replacing 'EU' with 'UK'. The process for authorising businesses for plant passporting will not change and businesses who will need to use the system on Day 1 are likely to already be registered. Therefore, we expect no extra impact on business from this change.

- 6.9 Third Country consignments of regulated plant material arriving in the UK via the EU would incur some small additional costs, as importers entering plants and plant products from third countries through Ro-Ro ports will be able to have checks carried out at authorised trade premises inland to avoid impacts at the border. The costs associated with checks and issue of the phytosanitary certificate will simply be a transfer of what previously took place in the EU. It is likely the original EU cost would be passed through to UK importers, assuming the anticipated cost-savings in the EU are similarly passed through then no additional impacts are created. However, there is an additional potential indirect time delay cost for the small proportion of third country goods that transit through the EU to the UK, associated with checks now happening inland instead of at the border. There may also be costs for storage while carrying out checks and any additional transport/wage costs incurred. This is expected to be minimal.
- 6.10 The impact on the public sector results from the list of direct costs above. Where costs relate to the service provided by the Animal and Plant Health Agency, most can be recovered from businesses who use and benefit from these services, but there are some that are not eligible to be recovered and will, therefore, be borne by the public sector.

Additional Indirect Costs

- 6.11 We could expect indirect costs if phytosanitary certification processes (either pre-UK or within UK) lead to delays in delivering plants and plant products to the sales shelf, which could erode product life and value. This would particularly be an issue for perishable plants and plant products. However, given that the approach is to undertake any checks remotely for goods that currently require an EU plant passport, in order to minimise disruption (and only follow-up in the way that would be done for plant passporting already), we do not expect any additional impacts on businesses, unless they occur pre-border in EU countries.
- 6.12 Some businesses may not be able to host checks inland at their premises. These businesses would need to enter their consignment at a port in the UK that could carry out checks at the border. There may, therefore, be indirect costs associated with the requirement to send goods via a different route.

Additional Benefits

- 6.13 There may be some minimal increase in protection against the spread of plant pests and diseases. This is because the current requirement is for an EU plant passport for trade in higher risk plants and plant products between the UK and other EU countries and that requirement would now increase to a phytosanitary certificate for those plants and plant products. In addition, there may be extra data available on higher risk commodities (through pre-notification), which would allow for better

targeting of plants and pests from the EU which present a biosecurity risk.

- 6.14 An impact assessment has not been prepared for this instrument because the direct impacts on businesses and the public sector are expected to be negligible and not requiring an impact assessment, as outlined in paragraphs 6.3 to 6.13 above.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable

		jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>by a Minister of the Crown or a Devolved Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because the Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively, in Wales, once we leave the EU. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”. This is because there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist. The public would also expect us to be able to take enforcement action against those that are in breach of plant health legislation. In addition, businesses would expect us to provide conditions within Wales that support the trade and movement of plant material.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

4.3 Little or no impact on equalities is expected.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

6.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018.

“In my view there are good reasons for the creation of criminal offences and for the penalties in respect of them in the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019.”

Amendments to existing offences in the Plant Health (Wales) Order 2018 will be needed to reflect new requirements introduced through the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 for regulated third country goods which enter Wales via the EU, which have not been subject to plant health checks in the EU and arrive at fast-moving, high volume Ro-Ro ports. The new requirements will require these goods to be moved inland and held securely until plant health checks have been completed. The new offence will provide the ability to enforce and prosecute serious cases of non-compliance with these new requirements.

In addition, a new criminal offence is also required to enforce any failure to comply with any prohibition or restriction in demarcated areas to prevent the spread of certain harmful plant pests in cases where this is an outbreak involving certain pests.

Offences under the Plant Health (Wales) Order 2018 carry, on summary conviction, a penalty of a fine not exceeding level 5 on the standard scale.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.