

Explanatory Memorandum to the Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd 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 etc. (Fees) (Wales) (Amendment) Regulations 2021.

Julie James MS
Minister for Climate Change
18 May 2021

Part 1

1. Description

The Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2021 (the “instrument”) will make amendments to the Plant Health etc. (Fees) (Wales) Regulations 2018 (“the 2018 Regulations”) which apply in relation to Wales. It provides for fees to be charged for plant health checks on commodities imported into Wales from EU member States, Switzerland and Liechtenstein. It also amends the relevant pre-export and export certification fees to ensure they do not apply for movements of goods between Wales and Northern Ireland.

2. Matters of special interest to the Senedd

None.

3. Legislative background

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 7 of Schedule 4 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

This instrument is subject to the draft affirmative procedure.

Regulation (EU) 2016/2031 on protective measures against pests of plants and Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products establish controls and restrictions which apply to the import and internal movement of certain plants, plants pests and other material. The purpose of these Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests.

Article 79 of Regulation (EU) 2017/625 requires the charging of fees for certain official controls, including plant health checks on certain regulated imported consignments. The 2018 Regulations specify fees payable to the Welsh Ministers in relation to plant health services, including import inspection services, provided in Wales.

The Protocol of Ireland / Northern Ireland means Northern Ireland remains in the EU plant health regime. Therefore, all movements of regulated plants between GB and Northern Ireland must meet EU third country requirements, including being accompanied by a phytosanitary certificate. If pre-exit fees related to production of phytosanitary certificates were not amended, they would apply in full to trade in regulated plants, plant products and other objects between Wales and Northern Ireland. This

would add additional costs to businesses when carrying out trade within the UK internal market.

The 2018 Regulations set fees for delivery of plant health services in Wales by the Welsh Ministers. This includes fees for pre-export and export certification services required to comply with third country entry requirements relating to plant health controlled material.

4. Purpose and intended effect of the legislation

Plant health checks (documentary, identity and physical) are carried out on regulated consignments imported into Wales from non-EU countries. The highest risk commodities are subject to 100% documentary, identity and physical checks. The level of identity and physical checks on other commodities is based on risk.

Fees are applied for checks under the 2018 Regulations. For consignments eligible for reduced levels of physical checks a proportionally reduced fee is applied to every imported consignment.

From 1 January 2021 plant health checks are also being carried out on consignments of regulated plants, plant products and other objects imported from EU member States, Switzerland and Liechtenstein. Under a phased approach, higher risk goods are subject to documentary, identity and physical checks from January. Documentary, identity and physical checks on other regulated plants, plant products and other objects will be phased in through 2021 and 2022.

In line with the standard approach that the full cost of service delivery be recovered from businesses using these services, this instrument applies fees for checks on imports of regulated plants, plant products and other objects from EU member States, Switzerland and Liechtenstein. In order to give businesses time to adjust to the new arrangements, the fees for documentary, identity and physical checks on the higher risk goods will not be applied until June 2021. Fees for identity and physical checks on the remaining regulated goods from EU member States, Switzerland and Liechtenstein, as set out in Schedule 2A, will be applied from 1 March 2022.

Under the 2018 Regulations there is a single combined fee for a documentary and identity check, reflecting the fact that both those checks were previously carried out at 100% on all consignments. Under Regulation (EU) 2017/625 the frequency of the identity check is linked to that of the physical check; so any reduction in the level of physical inspection will also apply to the identity check. This instrument provides for a separate fee for documentary and identity checks for all consignments.

This instrument does not make any other changes to existing fees for checks on consignments imported from non-EU countries other than Switzerland and Liechtenstein.

Similar changes are to be introduced by the UK and Scottish governments.

This Instrument makes amendments to provide an exemption from the payment of fees for pre-export and export certification services where goods are moving from Wales to a business or private individual in Northern Ireland. The exemption also applies to movements of goods by private individuals in their passenger baggage.

The instrument will ensure that trade between Wales and Northern Ireland is not subject to additional plant health costs.

5. Consultation

Whilst a formal consultation with stakeholders was not carried out by the UK Government, the UK Government have engaged extensively with stakeholders, including GB bodies which represent interests in Wales, throughout 2020, regarding the planned changes following the end of the Transition period. This included explanations of the planned charging regime for EU imports in October 2020 and was followed with details of the changes in December 2020. EU imports were also discussed in detail with the UK trade bodies, including the National Farmers' Union, Horticultural Trades Association and Fresh Produce Consortium during this period as well. Very limited feedback was received; mainly asking for clarification on how the new fees will be applied.

A consultation was conducted by the Welsh Government. It ran from 12 February to 16 April 2021 and engaged bodies including the National Farmers Union, Royal Horticultural Society, Agriculture and Horticulture Development Board, Horticulture Trades Association, British Potato Trade Association, National Trust, Grow Wales/Tyfu Cymru, Confederation of Forestry Industries, Fresh Produce Consortium, Woodland Trust and the British Society of Plant Breeders. Very limited feedback was received: mainly supportive of the alignment of plant health enforcement across England and Wales and concerned about the application of fees as business adjusts to the UK leaving the EU. The responses were considered and, on balance, it was concluded that they did not detract from the policy objectives of the instrument.

Stakeholders have not been consulted regarding the exemption from the payment of fees for pre-export and export certification services where goods are moving from Wales to a business or private individual in Northern Ireland, as these amendments are considered technical operability amendments and provide an exemption to the payment of fees.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. The instrument implements changes that are consequential to the UK's withdrawal from the EU and introduces a consistent approach to fees charged for plants imported from EU countries and non-EU countries. The instrument does not introduce policy changes to the regulatory regime itself.

There are no significant financial implications. The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

There is no, or no significant, impact on business, charities or voluntary bodies.

With regard to the Government of Wales Act 2006 this legislation has no impact on statutory partners (sections 72-75) or the statutory duties (sections 77-79).

The amendments in this instrument maintain the current policy for intra-UK trade; that full export and pre-export services should not be an additional financial burden to businesses when moving goods within the UK internal market.

Competition Assessment

The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.