

Explanatory Memorandum to the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020

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 (Amendment etc.) (Wales) (EU Exit) Regulations 2020.

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.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

24 November 2020

Part 1

1. Description

The Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020 (the “instrument”) will make amendments to subordinate legislation, which apply in relation to Wales in relation to plant health.

Part 1 and Part 3 of this instrument will come into force immediately before Implementation Period (IP) completion day, and Part 2 of this instrument comes into force, on IP completion day.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the draft affirmative procedure.

There is a requirement under paragraph 4(a) of Schedule 2 to the Withdrawal Act for the Welsh Ministers to consult the Secretary of State regarding regulations that are due to come into force prior to IP completion day. In accordance with this requirement, the Secretary of State has been consulted through a separate letter issued on 20 November 2020.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before IP completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK’s exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal 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.

The plant health regime is established, at European level, by Regulation (EU) 2016/2031) on protective measures against the pests of plants and Regulation (EU) 2017/625) on official controls and other official activities performed to ensure the application of matters including plant health (“the EU Regulations”) and associated implementing legislation.

The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures.

The EU Regulations, and the implementing legislation made under these Regulations, such as Commission Implementing Regulation (EU) 2019/2072, are directly applicable (i.e. national implementing legislation was not needed for them to take effect in UK law). The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2019 (S.I. 2020/206) (W. 48) (“the 2020 Regulations”) contain supplementary domestic provisions to enable the Welsh Ministers to carry out their obligations under the EU Regulations, enforce these EU Regulations and implement derogations to various provisions in the EU Regulations that are available to Member States. Separate but parallel domestic legislation applies in England, Scotland and Northern Ireland.

This instrument makes operability changes and other consequential amendments to domestic secondary legislation, including the 2020 Regulations, to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the transition period on 31 December 2020.

4. Purpose and intended effect of the legislation

The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within Great Britain (GB) and between GB and the EU at the end of the transition period.

The operability amendments to the 2020 Regulations contribute to the creation of a ‘single market’ covering GB and the Crown Dependencies. The EU will become a third country and, as a result, be subject to third country import controls. Plant health controls on material imported from third countries will continue to be applied. Internal controls will also continue to apply to movement of goods within the GB internal market.

The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime. The Pest Risk Analysis process evaluates biological and other scientific and economic evidence to determine whether an organism is a plant pest or pathogen which poses a significant risk to plants in GB. It determines if a pest should be considered for regulation and identifies specific control measures to be taken against it. These risk-based principles, as used in the EU regime, will continue but for GB risk levels.

The revised approach for EU imports will be phased in over 6 months, from 1 January 2021 to stagger the operational implementation of controls on EU products to allow trade to continue to flow whilst businesses adapt to the application of third country import controls. This will be a temporary and risk-based transitional arrangement, with the aim of ensuring consistent and technically justified import controls that apply to all countries exporting to GB.

What the instrument does

This instrument makes amendments to legislation in the field of plant health. It amends and revokes domestic secondary legislation relating to plant health.

This instrument revokes the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 (elements of which correct legislation that has since been revoked) and amends the following legislation:

- The Plant Health etc. (Fees) (Wales) Regulations 2018 - these Regulations, specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes, fruit plants and fruit plant propagating material; and
- The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 - these Regulations give effect to Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, and the plant health aspects of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls.

If this domestic secondary legislation was not amended, it would contain deficiencies that would prevent the Welsh Ministers from being able to deliver workable legislation on plant health. The instrument is made in exercise of powers under the Withdrawal Act to correct these deficiencies.

The UK Government are making equivalent amendments to equivalent secondary legislation that applies to England via the Plant Health (Amendment etc.) (EU Exit) Regulations 2020.

5. Consultation

Stakeholders have not been consulted on the amendments made by the 2020 Regulations as they are technical operability amendments as opposed to policy changes.

6. Regulatory Impact Assessment (RIA)

As the EU becomes a third country at the end of the Transition Period, regulated EU commodities imported to GB will be subject to standard third country controls for plant health (provide a certificate, pre-notify imports from the EU, undergo document, identity and physical checks). These direct impacts on businesses and the public sector are a result of the terms of the Withdrawal Act and do not reflect any change in GB plant health policy, therefore an impact assessment has not been prepared for this instrument.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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
Appropriate-ness	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 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 good reasons for making the instrument and that what is being done is a reasonable 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	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. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
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 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
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

Part 2

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

1. Appropriateness statement

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

“In my view the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate”.

This is the case because the changes being made address deficiencies arising from EU exit and ensure that the existing regime for safeguarding biosecurity will continue to operate effectively.

2. Good reasons

The Minister for Environment, Energy and Rural Affairs 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 instrument, and I have concluded they are a reasonable course of action”.

These are that there is public concern about biosecurity and the Government should at least maintain the protections that currently exist.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020 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.”

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

“In relation to the Plant Health (Amendment etc.) (Wales) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate

discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

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

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.