

Explanatory Memorandum to The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023.

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group and is laid before the Senedd Cymru 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. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023.

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 MS
Minister for Rural Affairs and North Wales, and Trefnydd
29 November 2023

PART 1

1. Description

This instrument is made under powers conferred by the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to amend legislation in the field of plant health.

The instrument will make amendments to The Plant Health etc. (Fees) (Wales) Regulations 2018 (“the 2018 Regulations”) which apply in relation to Wales. It aligns the timing of the imposition of certain fees in Wales with the extended transitional staging period, the Movement Assistance Scheme. This is the exemption for the payment of fees for pre-export and export certification services for certain movements of regulated plants, plant products and other objects (“regulated material”) to Northern Ireland, to facilitate trade between Wales and Northern Ireland.

The instrument will also make amendments to the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (“the 2019 Regulations”), which apply in relation to Wales. This will re-establish an exemption in certain circumstances from the payment of fees in respect of applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) to Northern Ireland for regulated material, to facilitate trade between Wales and Northern Ireland. The expiration date introduced will align with the extended transitional staging period, the Movement Assistance Scheme.

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

Regulation 3(5D) of the Plant Health (Fees)(Forestry) (Wales) Regulations 2019 was initially extended in line with other plant health fees in Wales, and in other governments, but erroneously ended at the end of 31st December 2022.

Although Fees could have been applied in 2023, due to the error in not extending this period, no fees were applied to exports regulated under regulation 3(5C) during 2023, after the provision ceased to have effect, and, therefore, no one has been, or will be, placed at a disadvantage.

Regulation 3 of these Regulations now further provides for an exemption from the date this instrument comes into force. The exemption will cease to have effect at the end of 30th June 2025.

3. Legislative background

The instrument relates to the withdrawal of the United Kingdom from the European Union. It is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 7(2) of Schedule 4 and paragraphs 1(8) and 21 of

Schedule 7 to the European Union (Withdrawal) Act 2018. This instrument is subject to the draft affirmative procedure. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

This instrument will make amendments to The Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 which apply in relation to Wales. It aligns the timing of the imposition of certain fees in Wales with the extended and re-established transitional staging period - the Movement Assistance Scheme.

4. Purpose and intended effect of the legislation

The amendments introduced do not include any policy changes. The instrument ensures the current policy for intra-UK trade is maintained; that pre-export and export certification services should not be an additional financial burden to businesses when moving regulated material within the UK internal market.

The purpose of this instrument is to extend and re-establish the exemption from the payment of fees for pre-export and export certification services relating to regulated material which is moving from Wales to a business or private individual in Northern Ireland. This is known as the Movement Assistance Scheme and will continue to facilitate trade between Wales and Northern Ireland.

Scotland and England plan to make parallel legislation, which will have the same effect in their territories.

What did any relevant EU law do before exit day?

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 (as amended) specify fees payable to the Welsh Ministers in relation to plant health services, including import inspection services, provided in Wales.

Annex 6 to Regulation (EU) 2017/625 provides the meaning of the transitional staging period.

The 2018 Regulations currently enable the Movement Assistance Scheme, providing an exemption from the payment of fees for pre-export and export certification services in respect of certain movements of regulated material from

Wales to Northern Ireland, following the UK's withdrawal from the European Union. This exemption is due to expire at the end of on 31st December 2023.

The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 implement Article 13d of Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.

Article 13d of that Directive requires member States to collect fees for documentary, identity and plant health checks carried out on certain consignments of wood, wood products and isolated bark originating in countries outside the European Union ("controlled consignments"). The Regulations set out circumstances in which fees must be paid to the Welsh Ministers.

Regulation 3 provided an exemption, in certain circumstances, from the payment of fees in respect of applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) to Northern Ireland for consignments containing wood, wood products, isolated bark or used forestry machinery. This exemption erroneously ended at the end of 31 December 2022.

Why is it being changed?

The Windsor Framework means Northern Ireland remains in the EU plant health regime. Movements of certain regulated material between Great Britain and Northern Ireland must therefore meet EU third country requirements, including being accompanied by a phytosanitary certificate. This would add additional costs to businesses when carrying out trade within the UK internal market.

The fees exemptions legislated for by the 2018 Regulations are currently due to expire at the end of 31st December 2023. This expiration date needs to be extended to prevent costs for pre-export and export certification services to businesses or private individuals who move regulated material from Wales to Northern Ireland under certain circumstances.

The fee exemptions legislated for by the 2019 Regulations were erroneously allowed to expire at the end of 31 December 2022. This amendment will provide for a new exemption period from the date this instrument comes into force, to prevent costs in respect of applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) for consignments containing wood, wood products, isolated bark or used forestry machinery. Although Fees could have been applied in 2023, due to the error in not extending this period, no fees were applied to exports regulated under regulation 3(5C) during 2023, after the provision ceased to have effect, and, therefore, no one has been, or will be, placed at a disadvantage due to the gap in this exemption period.

Both amendments ensure consistency and alignment with England and Scotland, where equivalent amendments are being made.

What will it now do?

In relation to the 2018 Regulations, this instrument extends the Movement Assistance Scheme - the exemption from the payment of fees for pre-export and export certification services for certain movements of regulated material to Northern Ireland - to 30th June 2025.

In relation to the 2019 Regulations, this instrument re-establishes an exemption, from the date this Instrument comes into force, from payment of certain fees for applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) to Northern Ireland for consignments containing wood, wood products, isolated bark or used forestry machinery. The exemption will be effective until the end of 30th June 2025.

Extending, and re-establishing, these expiration dates will prevent costs for pre-export and export certification services to businesses or private individuals who move regulated material from Wales to Northern Ireland under certain circumstances.

5. Consultation

The amendments introduced by this instrument do not include any policy changes. The instrument ensures the current policy for intra-UK trade is maintained; that services for pre-export and export certification to third countries should not be an additional financial burden to businesses when moving regulated material within the UK internal market.

Feedback from informal stakeholder engagement conducted by the UK Government was strongly supportive of the proposed extension, given its benefits to trade.

6. Regulatory Impact Assessment (RIA)

Please Note:

A Regulatory Impact Assessment has not been undertaken in relation to Regulation 2 of this instrument. This Regulation makes factual amendments to update subordinate legislation. These amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation.

A Regulatory Impact Assessment has been undertaken in relation to Regulation 3 of this Instrument. Option 2 was selected.

PART 2 – REGULATORY IMPACT ASSESSMENT

The following RIA has been undertaken in relation to proposed changes to the Plant Health (Fees) (Forestry) legislation in Wales.

Options

Option 1. Business as Usual

The most recent amendment to Regulation 3 paragraph (5D) of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 [The Plant Health \(Fees\) \(Forestry\) \(Wales\) Regulations 2019 \(legislation.gov.uk\)](#) set an expiration date for the exemption as the end of **31st December 2022**. This was in line, at the time, with the equivalent legislation in Wales on the Plant Health side (Plant Health etc. (Fees) (Amendment) (Wales) Regulations 2018) and with the equivalent Plant Health (Fees) (Forestry) legislation in Scotland and England.

A further amendment was laid to the Plant Health etc. (Fees) (Amendment) (Wales) Regulations 2018 and to the English and Scottish equivalent legislation altering the expiration date to the end of **31st December 2023** to extend the exemption from the fees for another calendar year.

However, the expiration date stated in Regulation 3 paragraph (5D) of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 was erroneously not also amended from the end of 31st December 2022 to the end of 31st December 2023 to keep pace with the other Nations and the Welsh Plant Health amendment.

Option 2. Legislate to extend the fees exemption

The policy intention is to extend an exemption put in place following the UK's exit from the European Union to aid the transition. The exemption was originally given to ease trade between Wales and Northern Ireland specifically, waiving the fees for phytosanitary certificates for a set period of time, to ease costs while traders took necessary steps to comply with new sanitary and phytosanitary rules after the transition period ended in 2020.

These Regulations re-establish the Forestry fees exemption, from the date this instrument comes into force until the end of **30th June 2025**, to keep in line with the same extended deadline being enacted in England and Scotland.

7. Costs and benefits

Option 1. Business as Usual

This is the baseline option and, as such, there are no additional costs or benefits associated with this option. Any businesses in Wales trading forestry products with Northern Ireland would be required to pay a fee to the Forestry Commission for a phytosanitary certificate. This would place businesses in Wales at a disadvantage to businesses in England and Scotland where an exemption which waives this fee is in place until June 2025.

On the 1st April 2019, a Memorandum of Understanding was signed between The Secretary of State for Environment, Food and Rural Affairs for the UK Government, The Cabinet Secretary for the Rural Economy for the Scottish

Government, The (then) Minister for the Environment, Energy and Rural Affairs for the Welsh Government and The Forestry Commissioners, for the Cross-Border provision of Forestry Functions and Research Delivery (the MoU).

Schedule 2 of the MoU “Plant Health and Forest Reproductive Materials” covers the delivery of certain statutory plant health (forestry) duties and powers and the regulation of Forest Reproductive Material and border inspections of wood and wood products entering into Great Britain. Under this Schedule, the application and collection of fees is delivered by the Forestry Commission on an England and Wales basis. Our post EU-exit policy approach has been to maintain a consistent Plant Health regime either side of the border, including regulatory changes. To do so, the Welsh legislation regarding Plant Health (Fees) (Forestry) should mirror the English equivalent, which it currently does not.

Option 2. Legislate to re-establish the fees exemption until the end of 30th June 2025

The exemption to the Schedule 4 fees covered by Regulation 3 paragraph (5D) delays the financial obligation on Welsh businesses to pay for the relevant fees when trading with Northern Ireland, easing costs while traders take necessary steps to comply with new sanitary and phytosanitary rules (following the UK’s exit from the EU) after the transition period ended in 2020. It is to the financial advantage of Welsh businesses affected for both the retrospective application and the forward-looking extension to be put in place. The fees covered by Schedule 4A are as follows:

The consideration of an application, including the issue, where appropriate, of a phytosanitary certificate for export or a phytosanitary certificate for re-export: £21.00.

The examination or testing of wood, wood products, isolated bark or used forestry machinery and associated activities (including travelling and office time:

- a) up to and including the first hour: £37.80.
- b) thereafter, for each additional 15 minutes or part thereof: £10.50.

The volume of trade that will take place between now and June 2025 and which would otherwise have been subject to a fee is unknown.

The Forestry Commission has confirmed that there have been no exports of regulated material from Wales to Northern Ireland since January 2023. This means that none of the fees covered by the lapsed exemption have been applied to date, during 2023. Therefore, Welsh businesses have not been placed at a competitive disadvantage over counterparts in England and Scotland, as none have been charged.

It is also unlikely that any Welsh exporters would have decided not to export due to the fees being in place during 2023, as the UK Gov website which informs businesses across GB of the rules applying to exports and associated fees does not make a distinction between Wales and England and Scotland. Therefore, it

is fair to assume a very low risk of businesses understanding the Welsh exemption from fees had lapsed and factoring this into their business decisions.

Re-establishing the exemption as described above, by making the Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023, has no cost implication to the Welsh Government and confers only benefit to affected businesses.

In addition to removing a potential cost to business, this option also ensures a consistent policy approach with England and Scotland.

8. Consultation

No consultation has been conducted since the original exemption was put in place as part of the Northern Ireland Movement Assistance Scheme, following the UK's exit from the European Union. However, feedback from informal stakeholder engagement conducted by the UK Government was strongly supportive of the proposed extension, given its benefits to trade.

9. Competition Assessment

The competition filter test has been completed, the Regulations are not expected to impact on the level of competition in Wales or to have a detrimental impact on the competitiveness of Welsh businesses.

10. Post implementation review

To measure the benefit, it would be possible to monitor the number of businesses engaging in export activities covered by the exemption and to estimate the number of certificates not required and inspection hours saved as a result.

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 requirements	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 Standing Order 27.1A	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 LJC 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	A statement that the SI does no more than is appropriate.

		statement when exercising powers in Schedule 2	
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 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	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

		have committed to make the same statement when exercising powers in Schedule 2	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	A statement to explain why it is appropriate to create such a sub-delegated power.

		create a legislative power exercisable not by a Minister of the Crown or a Devolved 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 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. Appropriateness statement

The Minister for Rural Affairs and North Wales, and Trefnydd, 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 etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023 does no more than is appropriate”.

This is the case because this instrument makes changes to ensure that the current policy for intra-UK trade is maintained; that services for pre-export and export certification to third countries should not be an additional financial burden to businesses when moving certain regulated material within the UK internal market.

2. Good reasons

The Minister for Rural Affairs and North Wales, and Trefnydd, 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 instrument, and I have concluded they are a reasonable course of action”. These are; the extending the Movement Assistance Scheme will prevent unnecessary costs to traders and individuals who move certain regulated material from Wales to Northern Ireland.

3. Equalities

The Minister for Rural Affairs and North Wales, and Trefnydd, 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.

The Minister for Rural Affairs and North Wales, and Trefnydd, 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. Explanations

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