

# **SL(6)409 – The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023**

## **Background and Purpose**

These Regulations amend the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (“the 2019 Regulations”) and the Plant Health etc. (Fees) (Wales) Regulations 2018 (“the 2018 Regulations”). The amendments extend the exemption from payment of certain fees payable to the Welsh Ministers under the 2018 Regulations and the 2019 Regulations. These Regulations are made in exercise of the powers conferred on the Welsh Ministers by the European Union (Withdrawal) Act 2018.

The purpose of these regulations is to extend 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.

Regulation 2 amends the 2018 Regulations by providing that the exemption ceases to have effect at the end of 30 June 2025.

Regulation 3 amends the 2019 Regulations by providing that the exemption ceases to have effect at the end of 30 June 2025.

Regulation 3(5D) of the 2019 Regulations erroneously provided that the exemption would end on 31 December 2022. Regulation 3 now extends this exemption.

## **Procedure**

Draft Affirmative.

The Welsh Ministers have laid a draft of these Regulations before the Senedd. The Welsh Ministers cannot make these Regulations unless the Senedd approves the draft Regulations.

## **Technical Scrutiny**

The following 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2 (iv) – that it appears to have retrospective effect where the authorising enactment does not give express authority for this.**

Regulation 3 of the 2019 Regulations 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 on 31 December 2022.

Regulation 3 of these Regulations extend the exemption to 30 June 2025. There is therefore a retrospective period between 31 December 2022 and the date on which these Regulations come into force, 30 December 2023.

The Explanatory Memorandum provides the following information on page 2, under 'Matters of special interest to the Legislation, Justice and Constitution Committee':

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

*Regulation 3 now extends this exemption until 30th June 2025. There is a retrospective period between 31st December 2022 and the 30th December 2023 when this instrument comes into force. No fees were applied to exports regulated under regulation 3(5C) in 2023 and, therefore, no one has been, or will be, placed at a disadvantage because of the retrospective provision.*

Whilst the Explanatory Memorandum explains the practical implications of the retrospectivity, it is noted that the enabling provisions cited do not appear to provide express authority for the Regulations to have retrospective effect.

## **2. Standing Order 21.2 (v) - that for any particular reason its form or meaning needs further explanation.**

Regulation 3(5C) of the 2019 Regulations ceased to have effect on 31 December 2022, by virtue of regulation 3(5D).

The Welsh Government is asked how it considers that substituting the date in regulation 3(5D) revives regulation 3(5C) of the 2019 Regulations?

## **Merits Scrutiny**

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## **3. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

There appear to be inconsistencies between the Explanatory Note and the effect of the amendments made by these Regulations.

The Explanatory Note states:

*Regulation 2 amends the Plant Health etc. (Fees) (Wales) Regulations 2018 by providing that the relevant date for fees to become payable under regulation 5A(4A) is 30 June 2025.*



*Regulation 3 amends the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 by providing that the relevant date for fees to become payable under regulation 3(5C) is 30 June 2025.*

Regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations provide for the exemption from the payment of fees, the fees are not payable under these particular paragraphs. Once the fees become payable, these paragraphs cease to have effect.

Further, the effect of the amendments is that regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations cease to have effect at the end of 30 June 2025, therefore the fees will become payable on 1 July 2025.

#### **4. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

No consultation has been undertaken, however the Explanatory Memorandum states, on page 5, that:

*The amendments introduced by this instrument do not include any policy changes.*

and

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

### **Welsh Government response**

Technical Scrutiny point 1: The Welsh Ministers are satisfied that the retrospective effect of these Regulations is lawful. No fees were applied in the period and no one was placed at a disadvantage by the retrospection. The provisions remove liability and confer benefit so they can be retrospective without offending rule of law principles.

Technical Scrutiny point 2: Regulation 3(5C) has never been revoked, but has had (until these Regulations) no legal effect since 1st January 2023. Regulation 3(5D) as now amended and which sits separately to regulation 3(5C) revives regulation 3(5C) of the 2019 Regulations by retrospectively providing for the continuation in period of the effect of regulation 3(5C).

Merit Scrutiny point 3: Clarity and consistency in the Explanatory Notes with the Regulations is desirable. However, the Explanatory Notes do not form part of the Regulations and the Regulations are correctly stated.

### **Committee Consideration**

The Committee considered the instrument and Government response at its meeting on 20 November 2023 and reports to the Senedd in line with the reporting points above.

