

Explanatory Memorandum to the Plant Health etc. (Fees) (Amendment) (Wales) (EU Exit) (No. 2) Regulations 2022

This Explanatory Memorandum has been prepared by the Landscapes, Nature and Forestry Division within the Department for Economy, Skills and Natural Resources of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation 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) (Amendment) (Wales) (EU Exit) (No. 2) Regulations 2022.

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Minister for Climate Change

21 June 2022

PART 1

1. Description

The Plant Health etc. (Fees) (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2022 will make amendments to Plant Health etc. (Fees) (Wales) Regulations 2018.

The Regulations introduce a flat rate fee for imports of 'plants for planting' (excluding dormant bulbs and seeds) and 'cuttings' reflecting the new frequency of checks, reinstate the fee for samples taken on imports and extend the Movement Assistance Scheme (MAS) to December 2023.

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

The Regulations correct an error in the Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2021 to re-instate a provision covering fees for samples taken on imports.

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 paragraphs 12 and 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 (as amended) specify fees payable to the Welsh Ministers in relation to plant health services, including import inspection services, provided in Wales.

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

The fees for plant health checks determined by the 2018 Regulations are being amended in this instrument to reflect the frequencies of checks established

under the Official Controls (Plant Health) (Frequency of checks) Regulations 2022, which is being introduced to implement a new risk-targeted inspection regime under which the frequency of plant health checks on imported consignments will be established.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

Regulation (EU) 2016/2031 on protective measures against pests of plants (“the Plant Health Regulation”) 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 (“the Official Controls Regulation”) (together “the GB Regulations”) establish controls and restrictions which apply to the import and internal movement of certain plants, plants pests and other material. The purpose of the GB Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests.

The 2015 Regulations and the 2018 Regulations set fees for the delivery of plant health services. This includes import inspection, pre-export, and export certification services to comply with third country entry requirements relating to plant health controlled material.

Why is it being changed?

Article 79 of the Official Controls Regulation requires the charging of fees for certain official controls, including plant health checks on certain regulated imported consignments.

The fees for plant health checks determined by the 2018 Regulations are being amended in this instrument to reflect the frequencies of checks established under the Official Controls (Plant Health) (Frequency of checks) Regulations 2022, which is being introduced to implement a new risk-targeted inspection regime under which the frequency of plant health checks on imported consignments will be established.

What will it now do?

The Regulations introduce a flat rate fee for plant health checks on ‘plants for planting’ (excluding dormant bulbs and seeds) and ‘cuttings’ imported into Wales from all third countries. This policy was proposed following stakeholder concerns on the current fees for importing from the European Union (EU). By introducing this measure, plants finished in the EU are prevented from benefiting from a cost advantage over plants imported for finishing in Great Britain.

The fees set out in the Regulations reflect the new frequency of plant health checks (Official Controls (Plant Health) (Frequency of Checks) Regulations 2022) established under the risk-targeted inspection regime which will apply from July 2022. This scheme will apply equally to imports from non-EU countries and

high priority goods from EU member States, Switzerland, and Liechtenstein. In line with the standard approach that the full cost of service delivery be recovered from businesses using these services, fees for physical, identity and documentary checks under the 2018 Regulations are being amended to reflect the frequencies established under the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022.

The Regulations also correct an error in the Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2021 (“the 2021 Regulations”) to re-instate importer fees for samples taken on imports. This ensures costs are recovered when a sample is taken from the consignment, for laboratory testing to confirm the presence of a controlled plant pest.

Finally, the Regulations also extend the MAS until December 2023. The MAS supports traders moving agrifood goods from Great Britain to Northern Ireland by assisting traders with advice and guidance to comply with new sanitary and phytosanitary rules after the transition period ended in 2020, helping cover direct costs.

5. Consultation

The UK Government issued a 7 week consultation from 14 December 2021 to 4 February 2022 on proposed changes to Plants for Planting Import Inspection Fees in England and Wales. The consultation was drawn to the attention of a wide audience of key stakeholders including the Wales Plant Health Evidence and Advisory Group (WPHEAG).

The responses gathered were generally supportive of the proposal for a flat rate fee, including the WPHEAG. Therefore, the proposed fee for certain categories of plants for planting is planned to be introduced in this legislation.

The consultation documents and a summary of the responses are available at: [Response to the Consultation on certain fees in England and Wales - UK Plant Health Information Portal \(defra.gov.uk\)](https://www.defra.gov.uk/plant-health/consultation-on-certain-fees-in-england-and-wales)

6. Regulatory Impact Assessment (RIA)

Having considered the Welsh Ministers’ Regulatory Impact Assessment Code there is a negligible impact on businesses in Wales. As a result, it was not considered necessary to carry out a regulatory impact assessment as the Regulations implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself. As stated in 3.2 of the Welsh Ministers’ Code, a factual amendment which does not alter the policy (or its impact) in any significant way qualifies as an exemption.

The Animal and Plant Health Agency (APHA) are responsible for statutory plant health services on an England and Wales basis on behalf of Welsh Ministers via a section 83 agreement. Therefore, fees for imports are collated on an England and Wales basis and are not available in a disaggregate format.

The impact of the proposed changes across Wales on business, charities or voluntary bodies are estimated to save c. £60K per annum in Wales due to lower levels of checks and subsequent impact on fees. However, the way in which mixed consignments are managed, may result in a very small over-recovery of £1.5K.

There is no, or no significant, impact on the public sector as a result of policy changes introduced under this instrument.

Charging a flat rate fee across England and Wales complies with the Plant Health common framework:

[CP 612 – Provisional UK Common Framework on Plant Health – Provisional Framework Outline Agreement and Concordat \(publishing.service.gov.uk\)](#). 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. Other policy options would not meet the policy objective.

With regard to the Government of Wales Act 2006 this legislation has no impact on statutory partners (sections 72-75). Officials have considered that there are no impacts on children's rights, equalities, rural proofing, data protection, Welsh language, biodiversity or socio-economic impacts as a result of policy changes introduced under this instrument.

9. Competition Assessment

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

10. Post implementation review

Plant health fees are subject to an annual review.