

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 24 March 2020

Meeting time: 09.15

For further information contact:

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Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest
09:15

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

09.15–09.20

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CLA(5)–11–20 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)517 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2020

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

09.20–09.25

Negative Resolution Instruments

3.1 SL(5)514 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

(Pages 2 – 130)

CLA(5)–11–20 – Paper 2 – Report

CLA(5)–11–20 – Paper 3 – Regulations

CLA(5)–11–20 – Paper 4 – Explanatory Memorandum



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

**3.2 SL(5)518 – The Wildlife and Countryside Act 1981 (Variation of Schedule 2)
(Wales) Order 2020**

(Pages 131 – 141)

CLA(5)–11–20 – Paper 5 – Report

CLA(5)–11–20 – Paper 6 – Order

CLA(5)–11–20 – Paper 7 – Explanatory Memorandum

**4 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3 but have implications as a result of the UK exiting
the EU**

09.25–09.30

Negative Resolution Instruments

4.1 SL(5)515 – The Food Information (Wales) (Amendment) Regulations 2020

(Pages 142 – 152)

CLA(5)–11–20 – Paper 8 – Report

CLA(5)–11–20 – Paper 9 – Regulations

CLA(5)–11–20 – Paper 10 – Explanatory Memorandum

**4.2 SL(5)519 – The Addition of Vitamins, Minerals and Other Substances (Wales)
(Amendment) Regulations 2020**

(Pages 153 – 165)

CLA(5)–11–20 – Paper 11 – Report

CLA(5)–11–20 – Paper 12 – Regulations

CLA(5)–11–20 – Paper 13 – Explanatory Memorandum

5 UK Government Coronavirus Bill

09.30–09.35

[Coronavirus Bill](#)

6 Paper(s) to note

09.35–09.40

**6.1 Letter from the Minister for International Relations and the Welsh Language
to the Chair of the Culture, Welsh Language and Communications
Committee: The Welsh Language Standards (No.8) Regulations**

(Pages 166 – 226)

CLA(5)–11–20 – Paper 14 – Letter from the Minister for International Relations and the Welsh Language, 16 March 2020

CLA(5)–11–20 – Paper 15 – Written statement

6.2 Letter from the Minister for Health and Social Services to the Llywydd: The Health Protection (Coronavirus) (Wales) Regulations 2020

(Page 227)

CLA(5)–11–20 – Paper 16 – Letter from the Minister for Health and Social Services, 17 March 2020

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

09.40

8 Consideration of Statutory Instruments

09.40–09.45

(Pages 228 – 230)

CLA(5)–11–20 – Paper 17 – Scrutiny of statutory instruments

Date of the next meeting – 20 April 2020

Statutory Instruments with Clear Reports 25 March 2020

SL(5)517 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2020

Procedure: Negative

These Regulations amend the National Health Service (Dental Charges) (Wales) Regulations 2006 (S.I. 2006/491 (W. 60)) ("the 2006 Regulations").

Regulation 2 amends regulation 4 of the 2006 Regulations (calculation of charges) by increasing the applicable charge payable for a Band 1, a Band 2 and a Band 3 course of treatment.

Parent Act: National Health Service (Wales) Act 2006

Date Made: 09 March 2020

Date Laid: 10 March 2020

Coming into force date: 01 April 2020



SL(5)514 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

Background and Purpose

These Regulations supplement two EU Regulations: Regulation EU 2016/2031 on protective measures against pests of plants ("the EU Plant Health Regulation") and Regulation (EU) 2017/2031 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 production products ("the EU Official Controls Regulation").

These Regulations will enable official controls and other official activities relating to plant health rules to be carried out in accordance with these Regulations and action to be taken to enforce these rules. It will also enable official controls relating to the deliberate release into the environment of genetically modified organisms for the purpose of food and feed production to be carried out in accordance with the EU Official controls Regulation.

In addition, these Regulations also make a small number of technical amendments to the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 and revoke a number of existing plant health orders.

Procedure

Negative.

Technical Scrutiny

The following 4 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 16 (Action which may be taken by a plant health inspector) gives a plant health inspector, on giving reasonable notice, a right of entry on to premises to eradicate, prevent or destroy infected material. Regulation 16(4) allows a plant health inspector to be accompanied by such other person as the inspector considers necessary. Regulation 16(5) says that a person accompanying a plant health inspector under paragraph (4) may:-

- “(a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant inspector.”

Regulation 16(5) has been drafted in a very broad manner and gives a wide discretion to a person that is not the plant health inspector to re-enter premises from time to time unaccompanied. In the absence of any adequate explanation of the powers in the explanatory memorandum, the Committee require a Government response to give further explanation as to the limitations of the powers exercisable under



regulation 16(5) and in particular how the provision satisfies Article 8 Human Rights in terms of proportionality.

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

Regulation 28(8) (Powers of entry) allows a person accompanying a plant health inspector under paragraph (6)(a)(ii) to:-

- “(a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant inspector.”

Regulation 28(8) has been drafted in a very broad manner and gives a wide discretion to a person that is not the plant health inspector to re-enter premises from time to time unaccompanied. In the absence of any adequate explanation of the powers in the explanatory memorandum, the Committee require a Government response to give further explanation as to the limitations of the powers exercisable under regulation 28(8) and in particular how the provision satisfies Article 8 Human Rights in terms of proportionality.

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

Regulation 31(5) (Failure to comply with a notice) allows a plant health inspector to enter onto premises with such other persons as the inspector deems necessary. Regulation 31(5) allows that person to-

- “(a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant inspector.”

Regulation 31(5) has been drafted in a very broad manner and gives a wide discretion to a person that is not the plant health inspector to re-enter premises from time to time unaccompanied. In the absence of any adequate explanation of the powers in the explanatory memorandum, the Committee require a Government response to give further explanation as to the limitations of the powers exercisable under regulation 31(5) and in particular how the provision satisfies Article 8 Human Rights in terms of proportionality.

4. Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements

Schedule 4, Regulation 38(1)(g) of these Regulations, refers to Commission Implementing Decision (EU) 2015/789 and specific reference to Annex III of this Decision on page 94. There is no Annex III to the Decision, only Annex I and II.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 March 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
National Assembly for Wales

Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 206 (W. 48)

**ENVIRONMENTAL
PROTECTION, WALES**

PLANT HEALTH, WALES

**The Official Controls (Plant Health
and Genetically Modified
Organisms) (Wales) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to—

- (a) Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (OJ No. L 317, 23.11.2016, p. 4) (“the EU Plant Health Regulation”), and
- (b) Regulation (EU) 2017/625 of the European Parliament and of the Council 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, in so far as it applies to the rules referred to in Article 1(2)(g) (OJ No. L 95, 7.4.2017, p. 1) (“the Official Controls Regulation”).

The Regulations also implement in relation to Wales—

- (a) Council Directive 69/464/EEC on the control of Potato Wart Disease (OJ No. L 323, 24.12.1969, p. 1),
- (b) Council Directive 93/85/EEC on the control of potato ring rot (OJ No. L 259, 18.10.1993, p. 1),
- (c) Council Directive 98/57/EC on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* (OJ No. L 235, 21.8.1998, p. 1), and

- (d) Council Directive 2007/33/EC on the control of potato cyst nematodes (OJ No. L 156, 16.6.2007, p. 12).

Part 1 is introductory and includes definitions. Regulation 3(2) provides for references to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants (OJ No. L 319, 10.12.2019, p. 1), and to the European Union instruments listed in regulation 3(1), to be read as references to those instruments as amended from time to time.

Regulation 6 (in Part 2) designates the Welsh Ministers as the competent authority in Wales for the purposes of the EU Plant Health Regulation and the Official Controls Regulation.

Part 3 makes further provision in relation to consignments of plants, plant products and other objects from third countries which are subject to official controls on their entry into the European Union.

Part 4 contains powers to enable plant health inspectors appointed by the Welsh Ministers to take measures to prevent the establishment or spread of harmful plant pests in Wales.

Part 5 and Schedule 1 impose additional temporary measures to prevent the entry of certain harmful plant pests into Wales or their establishment in, or spread within, Wales.

Part 6 makes further provision in relation to the registration of professional operators and the granting of authorisations to professional operators by the Welsh Ministers.

Part 7 and Schedule 2 impose additional requirements in relation to certain solanaceous species (potatoes and tomatoes) to implement the Directives mentioned above.

Part 8 imposes additional notification requirements in respect of certain plants and plant products which are to be brought into Wales from third countries, other member States or Switzerland.

Part 9 sets out general powers of plant health inspectors to enable them to perform official controls and other official activities, and enforce the EU Plant Health Regulation, the Official Controls Regulation and these Regulations.

Part 10 contains general and supplemental provisions in relation to notices given by plant health inspectors.

Part 11 contains offences for non-compliance with specified provisions of the EU Plant Health Regulation, the Official Controls Regulation and other EU instruments, and offences in relation to these Regulations. Regulation 48 sets out the penalties for these offences.

Part 12 deals with minor and consequential amendments to secondary legislation, revocations and transitional provisions in relation to plant health legislation.

Part 13 amends the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 to extend certain provisions in those Regulations relating to the implementation and enforcement of Regulation (EU) 2017/625 to official controls on the deliberate release into the environment of genetically modified organisms for the purposes of food and feed production.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Plant Health and Environment Protection branch of the Welsh Government, Rhodfa Padarn, Aberystwyth SY23 3UR.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 206 (W. 48)

**ENVIRONMENTAL
PROTECTION, WALES**

PLANT HEALTH, WALES

**The Official Controls (Plant Health
and Genetically Modified
Organisms) (Wales) Regulations
2020**

Made 2 March 2020

*Laid before the National Assembly for
Wales* 5 March 2020

Coming into force 27 March 2020

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SCHEDULE 6 — Revocation of
instruments

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ (“the 1972 Act”) in relation to the common agricultural policy⁽²⁾ and measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms⁽³⁾.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears expedient to the Welsh Ministers for the references to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants⁽⁴⁾, and to the European Union instruments mentioned in regulation 3(1), to be construed as references to those instruments as amended from time to time.

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- (1) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.
- (2) S.I. 2010/2690.
- (3) S.I. 2003/2901, to which there are amendments not relevant to these Regulations. By virtue of paragraph 28(1) of Schedule 11 to the Government of Wales Act 2006 (c. 32), the designation has effect as if made under section 59(1) of that Act.
- (4) OJ No. L 319, 10.12.2019, p. 1.

PART 1

Introduction

Title, application and commencement

1. The title of these Regulations is the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020, they apply in relation to Wales and come into force on 27 March 2020.

Interpretation: general

2.—(1) In these Regulations—

“the 2005 Order” (“*Gorchymyn 2005*”) means the Plant Health (Forestry) Order 2005⁽¹⁾;

“the 2018 Order” (“*Gorchymyn 2018*”) means the Plant Health (Wales) Order 2018⁽²⁾;

“appropriate authority” (“*awdurdod priodol*”) means the Welsh Ministers, and is to be construed in accordance with regulation 6;

“commencement date” (“*dyddiad cychwyn*”) means the date on which these Regulations come into force;

“controlled consignment” (“*llwyth a reolir*”) means a consignment containing any plant, plant product or other object—

(a) which may not be brought into the Union territory without a phytosanitary certificate for export or a phytosanitary certificate for re-export pursuant to—

(i) Article 72 or 74 of the EU Plant Health Regulation,

(ii) an EU emergency decision, or

(iii) any other EU plant health rule, other than Article 73 of the EU Plant Health Regulation, or

(b) which was exported from the Union territory to a third country and is returning to the Union territory following the refusal by that third country to allow its entry into the country;

“controlled plant pest” (“*pla planhigion a reolir*”) means—

(a) a plant pest of a description specified in Annex 2, 3 or 4 to the Phytosanitary Conditions Regulation,

(1) S.I. 2005/2517; amended by S.I. 2013/755 (W. 90). There are other amending instruments but none are relevant

(2) S.I. 2018/1064; there are amending instruments but none are relevant.

- (b) a plant pest of a description specified in an EU emergency decision, or
- (c) a plant pest subject to any other EU plant health rule;

“Council Directive 2000/29/EC” (“*Cyfarwydddeb y Cyngor 2000/29/EC*”) means 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⁽¹⁾;

“EU emergency decision” (“*penderfyniad brys gan yr UE*”) means an instrument referred to in regulation 3(1);

“EU Plant Health Regulation” (“*Rheoliad Iechyd Planhigion yr UE*”) means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants⁽²⁾;

“EU plant health rule” (“*un o reolau iechyd planhigion yr UE*”) means a rule within the meaning given in Article 1(2)(g) of the Official Controls Regulation;

“ISPM 15” (“*SRFFf 15*”) means International Standard for Phytosanitary Measures No. 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention established by the Food and Agriculture Organisation of the United Nations⁽³⁾;

“Official Controls Regulation” (“*Rheoliad Rheolaethau Swyddogol*”) means Regulation (EU) 2017/625 of the European Parliament and of the Council 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, insofar as it applies to EU plant health rules⁽⁴⁾;

“Phytosanitary Conditions Regulation” (“*Rheoliad Amodau Ffytioiechydol*”) means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as

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- (1) OJ No. L 169, 10.7.2000, p. 1, as last amended by Commission Implementing Directive (EU) 2019/523 (OJ No. L 86, 28.3.2019, p. 41).
 - (2) OJ No. L 317, 23.11.2016, p. 4, amended by Regulation (EU) 2017/625 of the European Parliament and of the Council (OJ No. L 95, 7.4.2017, p. 1).
 - (3) Available from the Secretariat of the International Plant Protection Convention, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.
 - (4) OJ No. L 95, 7.4.2017, p. 1, amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.3.2019, p. 4).

regards protective measures against pests of plants⁽¹⁾;

“plant health inspector” (“*arolygydd iechydd planhigion*”) means an official plant health officer appointed by the Welsh Ministers;

“plant pest” (“*pla planhigion*”) means a pest within the meaning given in Article 1(1) and (2) of the EU Plant Health Regulation;

“regulated item” (“*eitem a reoleiddir*”) means—

- (a) any plant, plant product or other object to which an EU plant health rule applies, other than any plant, plant product or other object which is part of a controlled consignment, or
- (b) a controlled plant pest;

“Wales” (“*Cymru*”) means the combined area of the counties and county boroughs in Wales (see Parts 1 and 2 of Schedule 4 to the Local Government Act 1972⁽²⁾).

(2) Unless the context otherwise requires, words and expressions which are not defined in these Regulations and appear in the EU Plant Health Regulation or the Official Controls Regulation have the same meaning in these Regulations as they have in the EU Plant Health Regulation or the Official Controls Regulation (as the case may be).

Interpretation: EU instruments relating to plant health

3.—(1) In these Regulations—

“Commission Decision 98/109/EC” (“*Penderfyniad y Comisiwn 98/109/EC*”) means Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand⁽³⁾;

“Commission Decision 2002/757/EC” (“*Penderfyniad y Comisiwn 2002/757/EC*”) means Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in ‘t Veld sp. nov.⁽⁴⁾;

“Commission Decision 2004/200/EC” (“*Penderfyniad y Comisiwn 2004/200/EC*”) means Commission Decision 2004/200/EC on measures

(1) OJ No. L 319, 10.12.2019, p. 1.

(2) 1972 c. 70.

(3) OJ No. L 27, 3.2.1998, p. 47.

(4) OJ No. L 252, 20.9.2002, p. 37, as last amended by Commission Implementing Decision (EU) 2016/1967 (OJ No. L 303, 10.11.2016, p. 21).

to prevent the introduction into and the spread within the Community of Pepino mosaic virus(1);

“Commission Implementing Decision 2011/787/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2011/787/EU*”) means Commission Implementing Decision 2011/787/EU authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt(2);

“Commission Implementing Decision 2012/138/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/138/EU*”) means Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)(3);

“Commission Implementing Decision 2012/270/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/270/EU*”) means Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)(4);

“Commission Implementing Decision 2012/535/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/535/EU*”) means Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode)(5);

“Commission Implementing Decision 2012/697/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/697/EU*”) means Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry)(6);

“Commission Implementing Decision (EU) 2015/789” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2015/789*”) means Commission Implementing Decision (EU) 2015/789 as regards

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- (1) OJ No. L 64, 2.3.2004, p. 43.
 - (2) OJ No. L 319, 2.12.2011, p. 112.
 - (3) OJ No. L 64, 3.3.2012, p. 38, as amended by Commission Implementing Decision (EU) 2014/356/EU (OJ No. L 175, 14.6.2014, p. 38).
 - (4) OJ No. L 132, 23.5.2012, p. 18, as last amended by Commission Implementing Decision (EU) 2018/5 (OJ No. L 2, 5.1.2018, p. 11).
 - (5) OJ No. L 266, 2.10.2012, p. 42, as last amended by Commission Implementing Decision (EU) 2018/618 (OJ No. L 102, 23.4.2018, p. 17).
 - (6) OJ No. L 311, 10.11.2012, p. 14.

measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.)(1);

“Commission Implementing Decision (EU) 2015/893” (“*Penderfyniad Gweithredu’r Comisiwn (EU) 2015/893*”) means Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky)(2);

“Commission Implementing Decision (EU) 2016/715” (“*Penderfyniad Gweithredu’r Comisiwn (EU) 2016/715*”) means Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.(3);

“Commission Implementing Decision (EU) 2017/198” (“*Penderfyniad Gweithredu’r Comisiwn (EU) 2017/198*”) means Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto(4);

“Commission Implementing Decision (EU) 2018/638” (“*Penderfyniad Gweithredu’r Comisiwn (EU) 2018/638*”) means Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)(5);

“Commission Implementing Decision (EU) 2018/1503” (“*Penderfyniad Gweithredu’r Comisiwn (EU) 2018/1503*”) means Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann)(6);

“Commission Implementing Decision (EU) 2019/1615” (“*Penderfyniad Gweithredu’r*

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- (1) OJ No. L 125, 21.5.2015, p. 36, as last amended by Commission Implementing Decision (EU) 2018/1511 (OJ No. L 255, 11.10.2018, p. 16).
 - (2) OJ No. L 146, 11.6.2015, p. 16.
 - (3) OJ No. L 125, 13.5.2016, p. 16, as last amended by Commission Implementing Decision (EU) 2019/449 (OJ No. L 77, 20.3.2019, p. 76).
 - (4) OJ No. L 31, 4.2.2017, p. 29.
 - (5) OJ No. L 105, 25.4.2018, p. 31, as amended by Commission Implementing Decision (EU) 2019/1598 (OJ No. L 248, 27.9.2019, p. 86).
 - (6) OJ No. L 254, 10.10.2018, p. 9.

Comisiwn (EU) 2019/1615”) means Commission Implementing Decision (EU) 2019/1615 establishing emergency measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV)(1);

“Commission Implementing Decision (EU) 2019/1739” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2019/1739*”) means Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus(2);

“Commission Implementing Decision (EU) 2019/2032” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2019/2032*”) means Commission Implementing Decision (EU) 2019/2032 establishing measures to prevent the introduction into and the spread within the Union of *Fusarium circinatum* Nirenberg & O'Donnell (formerly *Gibberella circinata*)(3).

(2) References to the Phytosanitary Conditions Regulation and to the European Union instruments referred to in paragraph (1) are to be construed as references to those instruments as amended from time to time.

Measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation

4. Any reference in the EU Plant Health Regulation to a pest that is subject to the measures adopted pursuant to Article 30(1) includes the following plant pests—

- (a) *Epitrix cucumeris* (Harris), *Epitrix* papa. (Orlova-Bienkowskaja), *Epitrix* subcrinita (Lec.) or *Epitrix tuberis* (Gentner);
- (b) *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto;
- (c) Rose rosette virus;
- (d) Tomato brown rugose fruit virus.

Article 82 of the EU Plant Health Regulation: meaning of “close proximity”

5.—(1) For the purposes of Article 82 of the EU Plant Health Regulation, the premises of a registered operator are to be regarded as being in “close proximity” to other premises of that operator if any point on the boundary of its operative area, or of any

(1) OJ No. L 250, 30.9.2019, p. 91.
 (2) OJ No. L 265, 18.10.2019, p. 12.
 (3) OJ No. L 313, 4.12.2019, p. 94.

of its operative areas, is within ten miles of any point on the boundary of the operative area, or of any of the operative areas, of the other premises.

(2) In paragraph (1), “operative area”, in relation to the premises of a registered operator, means—

- (a) in the case of premises which are used entirely by the registered operator to carry out one or more of the activities mentioned in Article 65(1) of the EU Plant Health Regulation, the area comprising those premises;
- (b) in the case of any other premises used by the registered operator to carry out one or more of the activities mentioned in Article 65(1) of the EU Plant Health Regulation, an area within the premises which is used by the registered operator to carry out any of those activities.

PART 2

Competent authorities: plant health

Designation of competent authorities

6.—(1) The Welsh Ministers are designated as the competent authority responsible for the organisation and the performance of official controls and other official activities in Wales insofar as they relate to—

- (a) plant pests, plants, tree pests, trees, forestry material or non-forestry material, or
- (b) forestry professional operators or other professional operators.

(2) In this regulation—

“forestry material” (*“deunydd coedwigaeth”*) means—

- (a) wood which retains part or all of its natural round surface, with or without bark;
- (b) wood in the form of chips, particles, shavings, sawdust, wood waste or scrap;
- (c) conifer trees over 3m in height;
- (d) bark which has been removed or become detached from, or from part of, a living, felled or fallen tree;

“forestry professional operator” (*“gweithredwr proffesiynol coedwigaeth”*) means a professional operator who carries out one or more of the following activities, but no other activities described in Article 2(9) of the EU Plant Health Regulation—

- (a) the introduction of forestry material into Wales;

- (b) the storage, aggregation or movement of forestry material within Wales, the movement of forestry material into Wales from another part of the Union territory or the movement of forestry material from Wales to another part of the Union territory;
 - (c) the export of forestry material from Wales to a third country;
 - (d) the treatment and marking of wood packaging material or forestry material in accordance with Annex 1 to ISPM 15 or the repair of wood packaging material in Wales;
 - (e) the introduction of tree pests into Wales, the movement of tree pests within Wales or the holding or multiplication of tree pests in Wales, for official testing, scientific or educational purposes, trials, varietal selection or breeding;
 - (f) the introduction of trees or forestry material into Wales or the movement of trees or forestry material within Wales, for use in official testing, scientific or educational purposes, trials, varietal selection or breeding;
- “non-forestry material” (*“deunydd nad yw’n ddeunydd coedwigaeth”*) means plants, plant products or other objects, other than forestry material;
- “tree” (*“coeden”*) means a living tree or shrub, or a living part of a tree or shrub, at any stage of its growth;
- “tree pest” (*“pla coed”*) means a plant pest which is injurious to trees or wood;
- “wood packaging material” (*“deunydd pecynnu pren”*) means wood or wood products (excluding paper products) used, or intended to be used, for supporting, protecting or carrying a commodity of any kind, including dunnage.

PART 3

Official controls on controlled consignments
from third countries and other official controls
on goods from third countries

Derogations to the requirement to give prior notification in accordance with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013

7.—(1) The responsible operator of a controlled consignment which is to be brought into Wales by air must have notified the appropriate authority of the

consignment's expected arrival at least four working hours before its expected arrival in Wales.

(2) In the case of any controlled consignment which consists, in whole or in part, of unprocessed logs or sawn or chipped wood and is to be brought into Wales at a point of entry which only has a temporary border control post, the responsible operator must have notified the Welsh Ministers of the consignment's arrival at least three working days before its expected arrival in Wales.

(3) Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 does not apply to any responsible operator of a controlled consignment referred to in paragraph (1) or (2).

(4) In this regulation—

“Commission Implementing Regulation (EU) 2019/1013” (*“Rheoliad Gweithredu'r Comisiwn (EU) 2019/1013”*) means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union⁽¹⁾;

“responsible operator” (*“gweithredwr cyfrifol”*), in relation to a controlled consignment, means an operator who is required to ensure that the consignment is presented for official controls at the border control post of first arrival into the Union in accordance with Article 47(5) of the Official Controls Regulation;

“temporary border control post” (*“safle rheoli dros dro ar y ffin”*) means a border control post in Wales which has been exempted from the obligations in Article 64(3)(a), (c) and (f) of the Official Controls Regulation pursuant to Article 4 of Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts⁽²⁾;

“working day” (*“diwrnod gwaith”*) means any day, other than—

- (a) a Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a bank holiday in Wales under the Banking and Financial Dealings Act 1971⁽³⁾;

“working hour” (*“awr waith”*) means a period of one hour during a day which in Wales is a working

(1) OJ No. L 165, 21.6.2019, p. 8.

(2) OJ No. L 165, 21.6.2019, p. 4.

(3) 1971 c. 80, to which there are amendments not relevant to these Regulations.

day, and “working hours” includes hours during more than one working day.

Suspicion of non-compliance

8.—(1) This regulation applies where a plant health inspector suspects that a controlled consignment or a regulated item is likely to be, or has been, brought into Wales from a third country in contravention of an EU plant health rule or that any such consignment or item may not otherwise comply with an EU plant health rule.

(2) A plant health inspector must serve a notice on the operator who is responsible for the controlled consignment or regulated item—

- (a) placing the consignment or item under official detention, and
- (b) prohibiting the entry of the consignment or item into the Union territory,

pending the outcome of official controls to confirm or eliminate the suspicion referred to in paragraph (1).

(3) This regulation applies to any controlled consignment or regulated item whether or not its ultimate destination is in Wales.

Consignments not correctly presented for official controls

9. Where a plant health inspector suspects or is aware that a controlled consignment has not been presented for official controls in accordance with Article 47(1) of the Official Controls Regulation, or in accordance with the other requirements referred to in Article 66(6) of that Regulation, the plant health inspector must serve a notice on the operator who is responsible for the consignment recalling the consignment and placing the consignment under official detention.

Official measures in relation to non-compliant consignments or consignments which pose a risk to plant health

10.—(1) This regulation applies to—

- (a) any controlled consignment or regulated item which, in the opinion of a plant health inspector, has been brought into Wales from a third country in contravention of an EU plant health rule,
- (b) any controlled consignment or regulated item which has been brought into Wales from a third country and which does not otherwise comply with an EU plant health rule, or
- (c) any consignment which has been brought into Wales from a third country and which, in the

opinion of a plant health inspector, poses a risk to plant health in Wales or to any other part of the Union territory.

(2) A plant health inspector must serve a notice on the operator who is responsible for the consignment or item—

- (a) placing the consignment or item under official detention, and
- (b) setting out the measures which the operator must take in relation to the consignment or item.

Notices under regulation 8, 9 or 10

11.—(1) A notice under regulation 8, 9 or 10 may include any of the following—

- (a) the measures that the responsible operator must take in relation to the consignment or item to isolate or quarantine the consignment or item or otherwise deal with the risk to plant health arising from the consignment or item;
- (b) where a plant health inspector requires the consignment or item to be destroyed or otherwise disposed of, re-exported or treated, the measures that the responsible operator must take to destroy or otherwise dispose of, re-export or treat the consignment or item;
- (c) any other measures which the plant health inspector considers are appropriate in the light of the suspected or known contravention or the risk to plant health in Wales or to any other part of the Union territory arising from the consignment or item.

(2) In paragraph (1), “responsible operator” is to be construed in accordance with regulation 8, 9 or 10 (as the case may be).

Border control posts: authorisation of inspection centres and commercial storage facilities

12.—(1) The appropriate authority may grant a permit which authorises—

- (a) the use of a facility which is located within a border control post as an inspection centre for the purposes of carrying out official controls and other official activities on controlled consignments and other regulated items on their arrival at the border control post;
- (b) the use of commercial storage facilities within the close vicinity of a border control post as a place at which identity checks and physical checks may be performed on controlled consignments and other regulated items on their arrival at the border control post.

(2) An application for a permit must be made to the appropriate authority by the operator of the facility or commercial storage facilities in the manner and form required by the appropriate authority.

(3) A permit may only be granted under paragraph (1)(a) if the appropriate authority is satisfied that the facility complies with the requirements specified in respect of inspection centres in Article 8 of Regulation (EU) 2019/1014.

(4) A permit may only be granted under paragraph (1)(b) if the appropriate authority is satisfied that the commercial storage facilities comply with the requirements specified in respect of commercial storage facilities in Article 3(11) of Regulation (EU) 2019/1014.

(5) A permit granted under paragraph (1)(a) or (b) must be in writing and may be granted—

- (a) subject to conditions;
- (b) for an indefinite period or a specified period.

(6) A permit granted under paragraph (1)(a) or (b) may include provision permitting the appropriate authority to modify, suspend or revoke the permit at any time by notice in writing.

(7) In this regulation, “Regulation (EU) 2019/1014” means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points⁽¹⁾.

Transitional provision: approved places of inspection

13.—(1) The appropriate authority may during the relevant period authorise—

- (a) the transportation of a controlled consignment to an approved place of inspection, and
- (b) the performance of identity checks and plant health checks by a plant health inspector at an approved place of inspection.

(2) The operator who is responsible for a controlled consignment that is destined for an approved place of inspection must—

- (a) by notice in writing give the appropriate authority the particulars set out in paragraph (3) no later than three working days before the consignment arrives in Wales,
- (b) ensure that the consignment, its packaging and the vehicle in which it is transported are

⁽¹⁾ OJ No. L 165, 21.6.2019, p. 10.

closed or sealed in such a way that there is no risk of the plants, plant products or objects in the consignment causing infestation, infection or contamination or a change occurring in the contents of the consignment, and

- (c) ensure that the consignment is accompanied by a plant health movement document.

(3) The particulars are—

- (a) the name, address and location of the approved place of inspection to which the consignment is destined,
- (b) the scheduled date and time of arrival of the consignment at the place referred to in subparagraph (a),
- (c) if available, the individual serial number of the plant health movement document in relation to that consignment,
- (d) if available, the date and place at which that plant health movement document was drawn up,
- (e) the name, address and registration number of the operator, and
- (f) the reference number of the phytosanitary certificate or phytosanitary certificate for re-export required in relation to the consignment pursuant to Article 72(1) or 74(1) of the EU Plant Health Regulation.

(4) The operator must notify the appropriate authority immediately in writing of any changes to the particulars which the operator has given under paragraph (2)(a).

(5) The notice must be given to the appropriate authority at the address given by the appropriate authority from time to time for the purposes of this regulation.

(6) An appropriate authority may for the purposes of paragraph (1) approve a place to which a controlled consignment may be destined as a place at which identity checks and plant health checks may be performed by a plant health inspector during the relevant period.

(7) An application for approval under paragraph (6) must be made to the appropriate authority in the manner and form required by the appropriate authority.

(8) An approval may be granted subject to conditions, including conditions relating to the storage of controlled consignments, and may be withdrawn at any time if the appropriate authority no longer considers that the place to which the approval relates is suitable for the purpose for which the approval was given.

(9) The appropriate authority may only approve a place as an approved place of inspection if the place

has been approved by the Commissioners for Her Majesty's Revenue and Customs for use as a temporary storage facility.

(10) In this regulation—

“approved place of inspection” (“*man arolygu a gymeradwywyd*”) means a place which was approved as a place of inspection by an appropriate authority under article 17(1) of the 2005 Order or the 2018 Order before the commencement date and which remains approved by virtue of regulation 54(1), or a place approved under paragraph (6);

“plant health movement document” (“*dogfen symud iechyd planhigion*”) means a document in the form set out in the Annex to Commission Directive 2004/103/EC on identity and plant health checks of plants, plant products or other objects, listed in Part B of Annex V to Council Directive 2000/29/EC, which may be carried out at a place other than the point of entry into the Community or at a place close by and specifying the conditions related to these checks⁽¹⁾;

“relevant period” (“*cyfnod perthnasol*”) means the period beginning on the commencement date and ending immediately before 14 December 2020;

“temporary storage facility” (“*cyfleuster storio dros dro*”) means a temporary storage facility within the meaning of Article 148 of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code⁽²⁾;

“working hour” (“*awr waith*”) has the meaning given in regulation 7(4).

PART 4

Official activities to prevent the establishment or spread of plant pests

Introduction

14.—(1) This Part applies if a plant health inspector suspects that a controlled plant pest or prohibited material is present or likely to be present, or becomes aware that a controlled plant pest or prohibited material is present, on any premises in Wales.

(2) In this Part—

(1) OJ No. L 313, 12.10.2004, p. 16.

(2) OJ No. L 269, 10.10.2013, p. 1, as last amended by Regulation (EU) 2019/632 of the European Parliament and of the Council (OJ No. L 111, 25.4.2019, p. 54).

“premises” (“*mangre*”) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“prohibited material” (“*deunydd gwaharddedig*”) means—

- (a) a plant, plant product or other object which is carrying, or is infested by or infected with, a controlled plant pest or may be carrying, or be infested by or infected with, a controlled plant pest;
- (b) a plant, plant product or other object the entry of which into the Union territory or Wales is prohibited under an EU plant health rule;
- (c) a plant, plant product or other object the movement of which within the Union territory, or into, within or from Wales, is prohibited under an EU plant health rule.

Notices in relation to controlled plant pests or prohibited material

15.—(1) A plant health inspector may serve a notice on the appropriate person—

- (a) requiring the appropriate person to treat, destroy or otherwise dispose of the controlled plant pest or prohibited material,
- (b) prohibiting for the period specified in the notice—
 - (i) the removal of any controlled plant pest or prohibited material from the premises, or
 - (ii) any activity which the inspector considers necessary to prohibit in order to prevent the establishment or spread of a controlled plant pest,
- (c) requiring the removal of any controlled plant pest or prohibited material from the premises, or
- (d) requiring the taking of any other steps, as specified in the notice, which the inspector considers necessary to eradicate the controlled plant pest or prevent its establishment or spread.

(2) If a plant health inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of, or ensuring the eradication of, any controlled plant pest from any premises, the inspector may serve a notice on the occupier imposing any prohibition or requiring any reasonable step to be taken for that purpose.

(3) In paragraph (1), “appropriate person” means—

- (a) in the case of premises used by a professional operator, the professional operator;
- (b) in the case of any other premises—
 - (i) the occupier or any other person in charge of the premises;
 - (ii) any other person who is in charge of the controlled plant pest or the prohibited material at those premises.

Action which may be taken by a plant health inspector

16.—(1) A plant health inspector may, on giving reasonable notice, enter any premises and any adjacent premises for the purpose of taking steps to—

- (a) eradicate, destroy or otherwise deal with any controlled plant pest,
- (b) prevent the spread of any controlled plant pest, or
- (c) destroy, treat or otherwise deal with any infected material.

(2) A plant health inspector must, if requested to do so, produce evidence of his or her authority before entering any premises for the purposes specified in paragraph (1).

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(4) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.

(5) A person accompanying a plant health inspector under paragraph (4) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant health inspector.

(6) In paragraph (1), “infected material” means—

- (a) a plant, plant product or other object which is carrying, or is infested by or infected with, a controlled plant pest or may be carrying, or be infested by or infected with, a controlled plant pest;
- (b) a plant, plant product or other object which is not carrying, or is not infested by or infected with, a controlled plant pest but the presence

or existence of which may, in the opinion of a plant health inspector, cause a controlled plant pest to spread or be spread.

Establishment of demarcated areas and measures to be taken in those areas

17.—(1) This regulation applies where an appropriate authority has officially confirmed the presence of a controlled plant pest which is not known to be present in Wales or the presence of a controlled plant pest in an area of Wales where it was not previously present.

(2) An appropriate authority may by notice—

- (a) demarcate an area in relation to the presence of the controlled plant pest for the purpose of eradicating or containing the plant pest;
- (b) specify the prohibitions or restrictions which are to apply to the demarcated area for that purpose.

(3) A notice under paragraph (2)—

- (a) must be in writing;
- (b) must describe the extent of the demarcated area;
- (c) must specify the date on which any such prohibitions or restrictions are to commence;
- (d) must be published in a manner appropriate to bring it to the attention of the public;
- (e) may be amended or revoked, in whole or in part, by further notice.

PART 5

Temporary national measures relating to plant health

Schedule 1

18. Schedule 1 contains additional temporary measures to prevent the entry of certain controlled plant pests into Wales, or their establishment in, or spread within, Wales.

PART 6

Registration, authorisations and certificates relating to plant health

Applications for registration

19. An application for registration pursuant to Article 66(1) of the EU Plant Health Regulation which

is to be submitted to an appropriate authority must be submitted in the manner and form required by the appropriate authority.

Other applications

20.—(1) The following applications must be made to the appropriate authority in the manner and form required by the appropriate authority—

- (a) an application for a temporary authorisation to permit a relevant activity for official testing, scientific or educational purposes, trials, varietal selection or breeding;
- (b) an application for an authorisation referred to in the following provisions of the EU Plant Health Regulation—
 - (i) Article 64(2),
 - (ii) Article 89(1), or
 - (iii) Article 98(1);
- (c) an application for the issue of a phytosanitary certificate for export, a phytosanitary certificate for re-export or a pre-export certificate.

(2) In this regulation—

“relevant activity” means an activity which would otherwise be prohibited under the EU Plant Health Regulation, an EU emergency decision or another EU plant health rule involving—

- (a) the introduction of a plant pest or a plant, plant product or other object into Wales,
- (b) the movement of a plant pest or a plant, plant product or other object within Wales,
- (c) the holding of a controlled plant pest or a plant, plant product or other object at premises in Wales, or
- (d) the multiplication of a plant pest at premises in Wales.

Authorisations for other purposes

21.—(1) The appropriate authority may grant an authorisation to permit the carrying out of—

- (a) any activity specified in a plant health derogation, or
- (b) any other activity which requires the approval of the appropriate authority under the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) An application for any such authorisation must be made to the appropriate authority in the manner and form required by the appropriate authority.

(3) In this regulation, a “plant health derogation” means—

- (a) a derogation from provisions of the EU Plant Health Regulation which is set out in an implementing or delegated act adopted by the European Commission under the EU Plant Health Regulation or the Official Controls Regulation, or
- (b) a derogation in any decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, which continues to apply for the purposes of the EU Plant Health Regulation on or after the commencement date and allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation.

Authorisations granted by an appropriate authority

22.—(1) An authorisation granted by an appropriate authority for the purposes of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations must be in writing and may be granted—

- (a) subject to conditions;
- (b) for an indefinite period or a specified period.

(2) An authorisation granted by an appropriate authority may permit the appropriate authority to modify, suspend or revoke the authorisation at any time by notice in writing.

PART 7

Measures relating to certain solanaceous species

Schedule 2

23. Schedule 2 contains specific measures relating to certain solanaceous species.

PART 8

Notification requirements: plant health

Notification requirements in relation to seed potatoes

24.—(1) A professional operator who is bringing any of the following potatoes into Wales must, at least two days before the expected date of their arrival in Wales, provide written notification to a plant health inspector of the matters referred to in paragraph (2)—

- (a) seed potatoes grown or suspected of having been grown in another member State or in Switzerland, or
- (b) potatoes, other than seed potatoes, grown or suspected of having been grown in Poland, Portugal, Romania or Spain.

(2) The matters are—

- (a) the expected time and date of their arrival,
- (b) their intended use,
- (c) their intended destination,
- (d) their variety and quantity, and
- (e) the identification number of the producer of the potatoes.

(3) In paragraph (1)(b), “Spain” means that part of Spain which is included within the Union territory for the purposes of the EU Plant Health Regulation, other than the Balearic Islands.

Notification requirements in relation to citrus fruits

25.—(1) A professional operator who is introducing notifiable citrus fruits into the Union territory through a border control post in another part of the Union territory must, before their arrival at that border control post, provide written notification to the Welsh Ministers at the specified address of the matters referred to in paragraph (2).

(2) The matters are—

- (a) the expected date of their introduction into the European Union;
- (b) the name of the border control post;
- (c) their volume;
- (d) the identification numbers of their containers;
- (e) the names, addresses and the locations of the premises in Wales at which they are to be processed.

(3) In paragraph (1)—

“notifiable citrus fruits” (“*ffrwythau sitrws hysbysadwy*”) means fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Microcitrus* Swingle, *Naringi* Adans., or *Swinglea* Merr., originating in a third country, which are to be industrially processed into juice in Wales;

“specified address” (“*cyfeiriad penodedig*”) means the address given by the Welsh Ministers from time to time for the purposes of this regulation.

Notification requirements in relation to other plants and plant products

26.—(1) A professional operator who is bringing any of the following plants or plant products into Wales

must, before or no later than four days after the date of their arrival in Wales, provide written notification to a plant health inspector of the matters referred to in paragraph (2)—

- (a) plants of *Castanea* Mill., *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L. intended for planting, which have been grown or are suspected of having been grown in another member State,
- (b) plants of *Castanea* Mill., *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L. intended for planting, which have been grown or are suspected of having been grown in Switzerland and to which Article 47(1) of the Official Controls Regulation does not apply, or
- (c) solid fuel wood from another member State, or solid fuel wood from a third country to which Article 47(1) of the Official Controls Regulation does not apply.

(2) The matters are—

- (a) the expected date of the arrival of the consignment or, if the consignment has arrived in Wales, the date on which it first arrived in Wales;
- (b) the intended destination of the consignment, or if the consignment has arrived at its intended destination in Wales, its current location;
- (c) the genus, species and quantity of the plants or wood in the consignment;
- (d) the country from which the plants or wood have been, or are to be, consigned;
- (e) in the case of plants intended for planting, the identification number of the supplier of the plants;
- (f) in the case of solid fuel wood—
 - (i) the address of the consignor, and
 - (ii) details of any phytosanitary treatments applied to the wood.

(3) In this regulation “solid fuel wood” means fuel wood in the form of logs, billets, twigs, faggots or other similar forms.

PART 9

General powers of plant health inspectors and enforcement

Interpretation

27.—(1) In this Part—

“ISPM 15 mark” (*“nod SRFFf 15”*) means the mark referred to in Article 96(1) of the EU Plant Health Regulation, which may be applied to wood packaging material to attest that it has been treated in accordance with Annex 1 to ISPM 15;

“premises” (*“mangre”*) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“wood packaging material” (*“deunydd pecynnu pren”*) includes any wood or other object which is required to be treated and marked in accordance with Annex 1 to ISPM 15.

(2) For the purposes of regulations 32 and 33, a person “incorrectly” applies the ISPM 15 mark to wood packaging material if the person applies the mark otherwise than in the manner specified in Article 96(1) of the EU Plant Health Regulation, as read with Article 97(1) of the EU Plant Health Regulation.

Powers of entry

28.—(1) A plant health inspector may enter any premises at a reasonable time for the purpose of—

- (a) performing official controls to verify that—
 - (i) an operator is complying with the Official Controls Regulation,
 - (ii) a professional operator is complying with the EU Plant Health Regulation,
 - (iii) a person is complying with these Regulations, or
 - (iv) any plants, plant products or other objects which are subject to an EU plant health rule or to the requirements in Schedule 1 comply with that rule or those requirements;
- (b) carrying out other official activities which are to be performed by the appropriate authority pursuant to the Official Controls Regulation, the EU Plant Health Regulation or these Regulations;
- (c) enforcing the Official Controls Regulation, the EU Plant Health Regulation or these Regulations;

- (d) verifying information supplied by a person in connection with an application for registration or for an authorisation or permit granted, or to be granted, under these Regulations;
- (e) ascertaining whether a condition of an authorisation or permit granted by an appropriate authority under these Regulations or for the purpose of the EU Plant Health Regulation or the Official Controls Regulation is being or has been complied with.

(2) A plant health inspector must, if requested to do so, produce evidence of his or her authority before entering any premises for the purposes specified in paragraph (1).

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(4) A plant health inspector who enters premises for a purpose specified in paragraph (1) or under a warrant issued by a justice of the peace may—

- (a) examine, photograph or mark any part of the premises, any object on the premises or anything that is attached to or otherwise forms part of the premises;
- (b) in the case of premises being used to manufacture wood packaging material, examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material or observe and monitor the manufacture of wood packaging material;
- (c) take samples of or from—
 - (i) any plant pest,
 - (ii) any plant, plant product or other object, or
 - (iii) any container, package or item which has been or may have been in contact with a plant pest or plant, plant product or other object;
- (d) open any container or package or require the owner or person in charge of any container or package to open the container or package;
- (e) inspect or make copies of any documents or records (in whatever form they may be held) relating to the production of, or any activities relating to, any plant, plant product or other object.

(5) A plant health inspector may destroy or otherwise dispose of any sample taken under this regulation when the sample is no longer required.

(6) A plant health inspector may—

- (a) be accompanied—
 - (i) by a representative of the European Commission or an authorised officer of any competent authority designated in the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation, or
 - (ii) such other persons as the inspector considers necessary, and
- (b) bring onto the premises such equipment and vehicles as the inspector considers necessary.

(7) A plant health inspector who is accompanied by a person mentioned in paragraph (6)(a)(i) may—

- (a) show the person any documents or records which are inspected by the inspector under paragraph (4)(e), and
- (b) make copies, or require copies to be made, of those documents or records for that person.

(8) A person accompanying a plant health inspector under paragraph (6)(a)(ii) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant health inspector.

Right of entry conferred by a warrant issued by a justice of the peace

29.—(1) A justice of the peace may by signed warrant permit an inspector to enter premises under regulation 16(1), 28(1) or 31(1), if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds to enter those premises, and
- (b) any of the conditions in paragraph (2) are met.

(2) The conditions are that—

- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier,
- (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry,
- (c) entry is required urgently, or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(3) A warrant is valid for one month.

(4) An inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Information notices

30.—(1) A plant health inspector or any other officer of an appropriate authority may by notice in writing require an appropriate person to give to the inspector or officer, within the time specified in the notice, any information which the person may possess as to—

- (a) the plants grown or products stored at any time on the premises specified in the notice,
- (b) any plant pest or plant, plant product or other object referred to in paragraph (4)(b), or
- (c) the persons who have had, or are likely to have had, any plant pest or plant, plant product or other object referred to in paragraph (4)(b) in their possession or under their charge.

(2) The time within which the information is required to be given to the inspector or other officer must be reasonable.

(3) An appropriate person must produce for examination by the inspector or other officer any authorisation, official statement, certificate, plant passport, record, invoice or other document relating to a plant pest or any plant, plant product or other object specified in the notice.

(4) In this regulation, “appropriate person” means—

- (a) in relation to any premises to be specified in a notice under paragraph (1), a person who is the owner, occupier or other person in charge of the premises,
- (b) a person who has, has had, or is reasonably suspected by the inspector or officer to have or have had, possession or charge of—
 - (i) a controlled plant pest,
 - (ii) any plant, plant product or other object which was carrying a controlled plant pest or which was infested by or infected with a controlled plant pest, or
 - (iii) any plant, plant product or other object which the inspector or officer knows or suspects to have been imported into or exported from Wales, or
- (c) a person who, as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of a controlled plant pest.

Failure to comply with a notice

31.—(1) If a person fails to comply with a notice served on that person under these Regulations, a plant health inspector may enter any affected premises at all reasonable times to take or cause to be taken any steps that the plant health inspector considers necessary to ensure compliance with the notice or to remedy the consequences of the failure to carry them out.

(2) A plant health inspector acting under paragraph (1) must, if requested to do so, show evidence of authority to act.

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(4) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.

(5) A person accompanying a plant health inspector under paragraph (4) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant health inspector.

Removal of ISPM 15 mark from wood packaging material

32. Where an inspector knows, or has reasonable grounds for suspecting, that the ISPM 15 mark has been incorrectly applied to wood packaging material, a plant health inspector may remove the mark or, by notice in writing, require another person to remove it.

Marking of wood packaging material: power of seizure

33.—(1) This regulation applies where a plant health inspector knows, or has reasonable grounds for suspecting, that a person has incorrectly applied, or intends to incorrectly apply, the ISPM 15 mark to wood packaging material at any premises in Wales.

(2) The plant health inspector may seize and detain from that person or from those premises any stencil, template or other item of equipment that appears to the inspector to be capable of being used to apply the ISPM 15 mark.

(3) If, in the opinion of the plant health inspector, it is not for the time being practicable for the inspector to

seize and remove any item, the inspector may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the inspector may seize and remove it.

(4) The plant health inspector must make reasonable efforts to give written notice to the appropriate person—

- (a) stating what has been seized and the reason for its seizure;
- (b) explaining the effect of paragraphs (5) to (12).

(5) Any item seized under paragraph (2) may be retained by the Welsh Ministers for as long as is necessary in all the circumstances, and in particular for the purposes of proceedings in relation to an offence specified in regulation 38(1).

(6) The Welsh Ministers may apply to the magistrate's court for the forfeiture of any item retained under paragraph (5).

(7) Where an application is made under paragraph (6), the court may order the item to be forfeited if the court is satisfied that—

- (a) an offence specified in regulation 38(1) has been committed in respect of it, or
- (b) it was used in the commission of such an offence.

(8) If the court orders the item to be forfeited, the Welsh Ministers may dispose of it in whatever way they think appropriate.

(9) If the court does not order the item to be forfeited, it must order the item to be returned to the appropriate person.

(10) The Welsh Ministers may recover from the appropriate person all reasonable costs incurred by the Welsh Ministers for the purposes of securing the forfeiture of an item under paragraphs (6) to (8).

(11) Where the retention of any item has been, but is no longer, authorised under this regulation—

- (a) the item must be returned to the appropriate person;
- (b) the appropriate person may apply to the magistrate's court for an order that the item be returned.

(12) Where the item is required to be returned to the appropriate person and reasonable efforts have been made, without success, to return the item to that person, the Welsh Ministers may dispose of the item in whatever way they think appropriate.

(13) In this regulation—

“appropriate person” means—

- (a) in the case of an item seized from a person, the person from whom the item was seized;

- (b) in the case of an item seized from premises, the occupier or any other person in charge of the premises;
- (c) in the case of an item seized from a person or premises which does not belong to a person falling within paragraph (a) or (b), the person to whom it belongs and who asserts ownership over it.

(14) Nothing in this regulation affects the powers of a plant health inspector under regulation 32.

Disclosure of information held by the Commissioners for Her Majesty's Revenue and Customs

34.—(1) The Commissioners for Her Majesty's Revenue and Customs may disclose any information in their possession to an appropriate authority for the purposes of enabling or assisting the appropriate authority to carry out any function conferred on it under or by virtue of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) Nothing in paragraph (1) affects any other power or requirement of the Commissioners to disclose information.

Disclosure of information to other competent authorities

35.—(1) The Welsh Ministers may disclose information to any other competent authority in another part of the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation.

(2) Nothing in paragraph (1) affects any other power or requirement of the Welsh Ministers to disclose information.

PART 10

General and supplemental provisions relating to plant health notices

Miscellaneous provisions as to notices

36.—(1) This regulation applies to any notice given by a plant health inspector under these Regulations, other than a notice given under regulation 33(4).

(2) The notice may—

- (a) specify—
 - (i) one or more requirements or alternative requirements;
 - (ii) the manner in which and the period in which any requirement or condition

specified in the notice must be carried out or fulfilled, or

(b) require the owner or any other person who appears to be in charge of the premises to which the notice relates to—

(i) notify the appropriate authority of any change in occupation of the premises, the date of the change and the name of the new occupier, and

(ii) inform the new occupier of the premises of the contents of the notice.

(3) Any destruction, disposal, re-export or treatment of a plant, plant product or other object or a plant pest which is required to be carried out under the notice must be carried out, or arranged to be carried out, to the satisfaction of a plant health inspector by the person on whom the notice has been served from or at the place specified in the notice.

(4) A plant health inspector may amend or withdraw the notice by a further notice.

(5) The notice may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

Service of notices

37.—(1) A notice may be served on a registered operator by—

(a) delivering it personally,

(b) leaving it at, or sending it by post to, the contact address of the registered operator, or

(c) sending it to the email address that the operator has given to the appropriate authority for the service of notices.

(2) A notice may be served on any other person by—

(a) delivering it personally,

(b) leaving it at, or sending it by post to, the person's last known place of abode or business, or

(c) sending it to any email address that the person has given to the appropriate authority for the service of notices.

(3) If a notice is to be given by a plant health inspector to an occupier or other person in charge of premises and the last known place of abode or address of that person cannot be ascertained after reasonable enquiry, the notice may be served on that person by addressing it to “the occupier” and leaving it conspicuously affixed to an object on the premises for a period of seven days.

(4) A notice may—

- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body at the address of the registered or principal office of that body,
- (b) in the case of a partnership (other than a limited liability partnership, but including a Scottish partnership), be served on a partner or a person having the control or management of the partnership business at the address of the principal office of the partnership, or
- (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of the partnership.

(5) For the purposes of paragraph (4), the principal office of a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(6) In this regulation—

“notice” (“*hysbysiad*”) means a notice to be given by a plant health inspector under these Regulations;

“contact address” (“*cyfeiriad cysylltu*”), in relation to a registered operator, means—

- (a) the operator’s principal address in the register, or
- (b) any other postal address in Wales that the operator has given to the appropriate authority as a contact address for the service of notices.

PART 11

Offences relating to plant health legislation

General

38.—(1) A person commits an offence if the person contravenes or fails to comply with—

- (a) regulation 24(1), 25(1) or 26(1);
- (b) paragraph 2 or 4 of Schedule 1;
- (c) paragraphs 2(1) or (2), 5(1) or (2), 11(1), 12(1), 13(1), 14(1), 15, 20(1), 21(7), 22(2), 27(1), 28(7), 29(2) or 31(2) of Schedule 2;
- (d) a provision of the EU Plant Health Regulation specified in Part 1 of Schedule 3;
- (e) a provision of the Official Controls Regulation specified in Part 2 of Schedule 3 (insofar as it applies to plants, plant products or other objects which are subject to an EU plant health rule);

- (f) a provision of any other EU legislation specified in Part 3 of Schedule 3;
- (g) a provision of an EU emergency decision specified in Schedule 4.

(2) But paragraph (1) does not apply to anything done under, or in accordance with—

- (a) an authorisation or permit which is granted under these Regulations or has effect under or by virtue of these Regulations;
- (b) an approval granted under regulation 13(6) or an approval referred to in regulation 54(1);
- (c) a notice which is given by a plant health inspector or an appropriate authority under these Regulations, or has effect under or by virtue of these Regulations.

Failure to comply with requirements of notices etc.

39. A person commits an offence if the person fails to comply with—

- (a) a provision or condition of a notice which has been served on the person under these Regulations or has effect under or by virtue of these Regulations,
- (b) a provision or condition of an authorisation or permit which has been granted to the person under these Regulations or has effect under or by virtue of these Regulations, or
- (c) a provision or condition of a direction given under these Regulations.

Defence: reasonable excuse

40. It is a defence for a person charged with an offence under regulation 38 or 39 to show that the person had a reasonable excuse for contravening or failing to comply with the prohibition or requirement in question.

Provision of false or misleading information

41. A person commits an offence if, for the purposes of obtaining an authorisation or a permit or procuring the issue of a plant passport or certificate, the person—

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular,
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular, or
- (c) intentionally fails to disclose any material information.

Improper use of plant passports or certificates

42.—(1) A person commits an offence if the person—

- (a) dishonestly issues a plant passport or a certificate,
- (b) dishonestly alters a plant passport or a certificate, or
- (c) dishonestly re-uses a plant passport or a certificate.

(2) In paragraph (1), “certificate” means a phytosanitary certificate for export, a phytosanitary certificate for re-export or a pre-export certificate.

Obstruction

43.—(1) A person commits an offence if the person—

- (a) intentionally obstructs a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations,
- (b) without reasonable excuse, fails to give to a plant health inspector or an authorised person any assistance or information which the inspector or authorised person may reasonably require for those purposes, or
- (c) fails to produce a document or record when required to do so by an appropriate authority or a plant health inspector acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) In paragraph (1), “authorised person” means a person authorised by an appropriate authority.

Offence relating to the disclosure of information held by Revenue and Customs

44. A person commits an offence if the person discloses any information received from the Commissioners for Her Majesty’s Revenue and Customs under regulation 34(1) and—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure,
- (b) the disclosure is for a purpose other than specified in regulation 34(1), and
- (c) the Commissioners have not given their prior consent to the disclosure.

Defence: lawful disclosure

45. It is a defence for a person charged with an offence under regulation 44 to prove that the person reasonably believed that—

- (a) the disclosure was lawful, or
- (b) the information had previously been made available lawfully.

Offences by bodies corporate

46.—(1) Where an offence under this Part has been committed by a body corporate and the offence is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “officer”, in relation to a body corporate, means—

- (a) a director, manager, secretary or other similar officer of the body, or
- (b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of a body corporate.

Offences by partnerships and unincorporated associations

47.—(1) Proceedings for an offence under this Part alleged to have been committed by a partnership or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate, and

- (b) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation)(1) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations)(2) apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of the partnership or association.

(4) If an offence under this Part committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4), “partner” includes a person purporting to act as a partner.

(6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In paragraph (6), “officer”, in relation to an unincorporated association, means—

- (a) an officer of the association or a member of its governing body, or
- (b) a person purporting to act in such a capacity.

Penalties

48.—(1) A person guilty of an offence under regulation 38(1), 39, 41, 42 or 43 is liable on summary conviction to a fine.

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- (1) 1925 c. 86; section 33 was repealed in part by Schedule 6 to the Magistrates Courts Act 1952 (c. 55), and amended by paragraph 19 of Schedule 8 to the Courts Act 1971 (c. 23) and paragraph 71 of Schedule 8, and Schedule 10, to the Courts Act 2003 (c. 39) (subject to savings specified in S.I. 2004/2066).
 - (2) 1980 c. 43; Schedule 3 was amended by Schedule 13 to the Criminal Justice Act 1991 (c. 53) and paragraph 51 of Schedule 3, and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44).

(2) A person guilty of an offence under regulation 44 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, to a fine or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

PART 12

Miscellaneous: plant health

Minor and consequential amendments

49. Schedule 5 contains minor and consequential amendments to secondary legislation relating to the marketing of seeds and plant propagating material and plant health fees.

Revocation of plant health instruments

50. The instruments listed in Schedule 6 are revoked.

Transitional provisions: licences under article 39(1) of the 2005 Order or article 41(1) of the 2018 Order

51.—(1) Any licence granted by the Welsh Ministers under article 39(1) of the 2005 Order or under article 41(1) of the 2018 Order, which is in force immediately before the commencement date, has effect during the relevant period as if it had been granted by the appropriate authority in accordance with Article 5 of Commission Delegated Regulation (EU) 2019/829 on the date on which it was granted under the 2005 Order or the 2018 Order.

(2) Nothing in paragraph (1) affects anything carried out prior to the commencement date under, or for the purposes of, the licence.

(3) Any reference in the licence to the 2005 Order, the 2018 Order, Council Directive 2000/29/EC or Commission Directive 2008/61/EC is to be read as a reference to the corresponding provision in or under the EU Plant Health Regulation or these Regulations.

(4) In this regulation—

“Commission Delegated Regulation (EU) 2019/829” (*“Rheoliad Dirprwyedig y Comisiwn (EU) 2019/829”*) means Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or

educational purposes, trials, varietal selections, or breeding⁽¹⁾;

“Commission Directive 2008/61/EC” (“*Cyfarwyddeb y Comisiwn 2008/61/EC*”) means Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections⁽²⁾;

“relevant period” (“*cyfnod perthnasol*”), in relation to a licence, means—

- (a) if the licence expires on or after 31 December 2020, the period beginning on the commencement date and ending on 31 December 2020, or
- (b) if the licence expires before 31 December 2020, the period beginning on the commencement date and ending on the date of expiry of the licence specified in the licence.

Transitional provisions: other licences under the 2005 Order or the 2018 Order

52.—(1) Any licence granted by the Welsh Ministers under article 38(1)(a) of the 2005 Order or under article 40(1)(a) of the 2018 Order and which has effect on the commencement date remains in force as if it were an authorisation granted by the appropriate authority under regulation 21(1)(a) on the date on which the licence was granted under the 2005 Order or the 2018 Order.

(2) Nothing in paragraph (1) affects anything carried out before the commencement date under, or for the purposes of, the licence.

(3) Any reference in the licence to the 2005 Order, the 2018 Order or Council Directive 2000/29/EC is to be read as a reference to the corresponding provision in or under the EU Plant Health Regulation or these Regulations.

Transitional provisions: notices

53.—(1) Any notice given under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006⁽³⁾ or the 2018 Order and which has effect on the commencement date—

(1) OJ No. L 137, 23.5.2019, p. 15.

(2) OJ No. L 158, 18.6.2008, p. 41.

(3) S.I. 2006/2695, amended by S.I. 2013/755 (W. 90) and S.I. 2019/734.

- (a) remains in force and continues to have effect as if it were given under these Regulations for an equivalent purpose on the date on which it was given under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 or the 2018 Order (as the case may be), and
- (b) is to be read with such modifications as are necessary for it to do so.

(2) In paragraph (1), the reference to any notice under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 or the 2018 Order includes any official approval given for the purposes of the notice.

Transitional provisions: approvals granted under article 17(1) of the 2005 Order or the 2018 Order

54.—(1) Any approval granted by the Welsh Ministers under article 17(1) of the 2005 Order or under article 17(1) of the 2018 Order which is in force immediately before the commencement date remains in force and continues to have effect during the relevant period.

(2) In paragraph (1), “relevant period”, in relation to an approval granted under 17(1) of the 2005 Order or the 2018 Order, means—

- (a) if the approval expires on or after 13 December 2020, the period beginning on the commencement date and ending on 13 December 2020, or
- (b) if the approval expires before 13 December 2020, the period beginning on the commencement date and ending on the date of expiry of the approval specified in the approval.

PART 13

Official controls in relation to genetically modified organisms

Amendment to secondary legislation on official controls in relation to genetically modified organisms

55.—(1) The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020(1) are amended as follows.

(1) S.I. 2020/44 (W. 5).

(2) In regulation 2(1), in the definition of “relevant legislation”, for “sub-paragraphs (a), (c), (d), (e) and (f)” substitute “sub-paragraphs (a) to (f)”.

(3) In regulation 13(5)(b), in the Welsh language text, after “bodlonir” insert “un”.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

2 March 2020

SCHEDULE 1 Regulation 18

Temporary national measures

Interpretation

1. In this Schedule, “introduce” means introduce into Wales from a third country or another part of the Union territory.

PART 1

Plants, plant products or other objects from third countries

Temporary measures applying to the introduction of plants, plant products or other objects from third countries

2.—(1) No person may introduce any used machinery or vehicles which have been operated for agricultural or forestry purposes and exported from Switzerland unless the machinery or vehicles—

- (a) have been exported from an area established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., or
- (b) in the case of any machinery or vehicles exported from an area infested with *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., they have been cleaned and were free from soil and plant debris prior to being moved out of the area.

(2) In paragraph (1), “ISPM 4” means International Standard for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations⁽¹⁾.

(1) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

PART 2

Plants, plant products or other objects from
another part of the Union territory

Temporary measures applying to the introduction of plants, plant products or other objects from another part of the Union territory

3. In this Part—

“move” (“*symud*”) means move within Wales;

“official statement” (“*datganiad swyddogol*”) means a statement issued by, or under the supervision of, an authorised representative of the competent authority in the member State of origin;

“Spain” (“*Sbaen*”) means that part of Spain which is included within the Union territory for the purposes of the EU Plant Health Regulation, other than the Balearic Islands.

4. No person may introduce or move any plants, plant products or other objects described in column 2 of Table 1 unless they are accompanied by an official statement confirming the matters set out in the corresponding entry in column 3 of that Table.

Table 1

(1)	(2) <i>Description of plants, plant products or other objects</i>	(3) <i>Details of official statement</i>
1.	Tubers of <i>Solanum tuberosum</i> L., including those intended for planting which originate in Spain except where those tubers originate in an area which has been established in accordance with Article 5 of Decision 2012/270/EU	The official statement must confirm that the tubers have been washed so that there is no more than 0.1% of soil remaining
2.	Tubers of <i>Solanum tuberosum</i> L., originating in Poland	The official statement must confirm that the tubers have been found free from <i>Clavibacter michiganensis</i> ssp. <i>Sepedonicus</i> (Spieckermann and Kotthoff) David <i>et al.</i> in laboratory tests

SCHEDULE 2 Regulation 23

PART 1

General interpretation

1. In this Schedule—

“Directive 93/85/EEC” (“*Cyfarwydddeb 93/85/EEC*”) means Council Directive 93/85/EEC on the control of potato ring rot⁽¹⁾;

“Directive 98/57/EC” (“*Cyfarwydddeb 98/57/EC*”) means Council Directive 98/57/EC on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*⁽²⁾;

“Directive 2007/33/EC” (“*Cyfarwydddeb 2007/33/EC*”) means Council Directive 2007/33/EC on the control of potato cyst nematodes⁽³⁾;

“premises” (“*mangre*”) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“potato” (“*taten*”) means any tuber or true seed or any other plant of *Solanum tuberosum* L. or other tuber-forming species of the genus *Solanum* L.;

“Potato brown rot” (“*Pydredd coch tatws*”) means either the disease of potatoes caused by *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* or that bacterium, as the context requires;

“Potato ring rot” (“*Pydredd cylch tatws*”) means either the disease of potatoes which is caused by the bacterium *Clavibacter michiganensis* (Smith) Davis *et al.* spp. *Sependonicus* (Spieckermann and Kotthof) Davis *et al.* or that bacterium, as the context requires;

“Seed Potatoes Regulations” (“*Rheoliadau Tatws Hadyd*”) means the Seed Potatoes (Wales) Regulations 2016⁽⁴⁾.

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- (1) OJ No. L 259, 18.10.1993, p. 1, as amended by Commission Directive 2006/56/EC (OJ No. L 182, 4.7.2006, p. 1). It is repealed from 1 January 2022 (see Article 113(2) of Regulation (EU) 2016/2031 (OJ No. L 317, 23.11.2016, p. 4).
- (2) OJ No. L 235, 21.8.1998, p. 1, as amended by Commission Directive 2006/63/EC (OJ No. L 206, 27.7.2006, p. 36). It is repealed from 1 January 2022 (see Article 113(2) of Regulation (EU) 2016/2031).
- (3) OJ No. L 156, 16.6.2007, p. 12. It is repealed from 1 January 2022 (see Article 113(2) of Regulation (EU) 2016/2031).
- (4) S.I. 2016/106 (W. 52).

PART 2

General provisions relating to the planting of certain solanaceous species

General restrictions on the planting of potatoes

2.—(1) A person must not knowingly plant, or knowingly cause or permit to be planted—

- (a) any potatoes which have been grown in a third country, other than Switzerland, or
- (b) any potatoes produced from those potatoes.

(2) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes unless—

- (a) they derive in direct line from potato material which has been obtained under an officially approved programme in the European Union or Switzerland,
- (b) they have been found to be free from Potato ring rot in official tests using the methods set out in Annex 1 to Directive 93/85/EEC, and
- (c) they have been found to be free from Potato brown rot in official tests using the methods set out in Annex 2 to Directive 98/57/EC.

PART 3

Measures for the control of Potato wart disease

Interpretation

3. In this Part—

- (a) “Potato wart disease” means either the disease of potatoes which is caused by the fungus *Synchytrium endobioticum* (Schilbersky) Percival or that fungus, as the context requires;
- (b) a plot of land is to be regarded as a contaminated plot if Potato wart disease is confirmed by an official test to be present on at least one plant that is growing or was grown on that plot.

Official measures relating to contaminated plots of land

4.—(1) A plant health inspector must demarcate any contaminated plot and a safety zone around that plot which is large enough to ensure the protection of the surrounding area.

(2) A plant health inspector must serve a notice under regulation 15(1) requiring any potato tubers or

haulms which are present on the contaminated plot, or which come from the contaminated plot, to be treated in such a way that the Potato wart disease present on them is destroyed.

(3) Where a plant health inspector is satisfied that any potato tubers or haulms are contaminated with Potato wart disease and the inspector cannot determine whether those tubers or haulms have been present on a contaminated plot, the inspector may serve a notice under regulation 15(1) which requires the whole batch containing the affected tubers or haulms to be treated in such a way that there is no risk of Potato wart disease spreading.

Prohibition on the planting of potatoes on contaminated plots

5.—(1) Where a contaminated plot is demarcated under paragraph 4(1), no person may—

- (a) grow any potatoes on the plot, or
- (b) grow or store on the plot any plants intended for transplanting.

(2) No person may grow potatoes in a safety zone demarcated under paragraph 4(1) unless a plant health inspector is satisfied that they are of a variety which is resistant to the races of Potato wart disease found on the contaminated plot to which the safety zone relates.

(3) A potato variety is to be considered resistant to a particular race of Potato wart disease for the purposes of sub-paragraph (2) where that variety reacts to contamination by the pathogenic agent of that race in such a way that there is no danger of secondary infection.

Revocation of the demarcation of a contaminated plot

6. Where a plant health inspector is satisfied that Potato wart disease is no longer present on a plot which was demarcated under paragraph 4(1) or on its associated safety zone, the inspector must revoke that demarcation.

PART 4

Measures for the control of European populations of Potato cyst nematode

Interpretation

7. In this Part—

“field” (“*cae*”) means an area which has been demarcated as a field for the purposes of Article 3 of Directive 2007/33/EC;

“host plants” (“*planhigion cynhaliof*”) means plants with roots of *Capsicum* spp., *Solanum lycopersicum* L. or *Solanum melongena* L.;

“infested field” (“*cae a heigiwyd*”) means a field which is recorded as infested pursuant to paragraph 9(1);

“notice” (“*hysbysiad*”) means a notice under regulation 15(1);

“Potato cyst nematode” (“*Llyngyr tatws*”) means any cyst-forming nematode of the species *Globodera pallida* (Stone) Behrens or *Globodera rostochiensis* (Wollenweber) Behrens that infests and multiplies on potatoes, including any strain or pathotype of any such nematode;

“susceptible bulbs” (“*bylbiau sy’n dueddol o gael plâu neu glefydau*”) means bulbs, tubers or rhizomes, grown in soil and intended for planting, of *Allium ascalonicum* L., *Allium cepa* L., *Dahlia* spp., *Gladiolus* Tourn. Ex L., *Hyacinthus* spp., *Iris* spp., *Lilium* spp., *Narcissus* L. or *Tulipa* L., other than those for which there is evidence by their packaging or by other means that they are intended for sale to final consumers not involved in professional plant or cut flower production;

“susceptible material” (“*deunydd sy’n dueddol o gael plâu neu glefydau*”) means host plants, susceptible bulbs or susceptible plants;

“susceptible plants” (“*planhigion sy’n dueddol o gael plâu neu glefydau*”) means plants with roots of *Allium porrum* L., *Asparagus officinalis* L., *Beta vulgaris* L., *Brassica* spp. or *Fragaria* L.

Official investigations and surveys

8. The Welsh Ministers must ensure that—

- (a) official investigations are carried out in accordance with Articles 4 and 5 of Directive 2007/33/EC for the presence of Potato cyst nematodes in fields in which seed potatoes or susceptible material intended for the production of plants for planting are to be planted or stored, and
- (b) official surveys are carried out in accordance with Article 6 of Directive 2007/33/EC for the presence of Potato cyst nematodes in fields used for the production of potatoes, other than those intended for the production of seed potatoes.

Official records of investigations and surveys

9.—(1) The Welsh Ministers must ensure that the results of each official investigation or official survey carried out pursuant to paragraph 8 are recorded to

indicate whether Potato cyst nematodes were found in the fields during the investigation or survey.

(2) Where the officially approved measures set out in Section 3(C) of Annex 3 to Directive 2007/33/EC have been taken in a field which has been recorded as infested pursuant to sub-paragraph (1) and, following the completion of those measures, it is officially confirmed that Potato cyst nematodes are no longer present in the field, the Welsh Ministers must ensure that the record is updated accordingly.

Notices in relation to infested fields and contaminated susceptible material

10.—(1) A plant health inspector must serve a notice in writing on the occupier or other person in charge of an infested field which specifies the boundaries of the infested field.

(2) The notice may not be withdrawn until it is confirmed, in accordance with paragraph 9(2), that Potato cyst nematode is no longer present in the field.

(3) A plant health inspector must by notice designate as contaminated any susceptible material which comes from a field that has been officially recorded as infested under paragraph 9(1) or any susceptible material which has been in contact with soil in which Potato cyst nematodes have been found.

Prohibition on the planting of potatoes in infested fields

11.—(1) Unless authorised to do so by an inspector, no person may—

- (a) plant any potatoes that are intended for the production of seed potatoes in an infested field, or
- (b) plant or store any susceptible material which is intended for planting in an infested field.

(2) A plant health inspector may authorise the planting of susceptible bulbs or susceptible plants in an infested field.

(3) An authorisation under sub-paragraph (2) must be by notice and must contain the measures set out in Section 3(A) of Annex 3 to Directive 2007/33/EC.

Suppression of Potato cyst nematodes

12.—(1) No person may plant any potatoes that are not intended for the production of seed potatoes in an infested field unless authorised to do so by a plant health inspector.

(2) An authorisation under sub-paragraph (1) must be by notice and may only be given if the inspector is satisfied that all reasonable steps to suppress Potato cyst nematodes in the field have been taken in

accordance with the official control programme adopted by the Welsh Ministers for the suppression of Potato cyst nematodes.

Controls on contaminated seed potatoes etc.

13.—(1) No person may plant any seed potatoes or any host plants which have been designated as contaminated pursuant to paragraph 10(3), unless authorised to do so by an inspector.

(2) An authorisation under sub-paragraph (1) must be by notice and must contain the measures which the inspector considers necessary to decontaminate those seed potatoes or host plants.

Controls on potatoes for industrial processing or grading

14.—(1) No person may move any potatoes which have been designated as contaminated pursuant to paragraph 10(3) and are intended for industrial processing or grading, unless authorised to do so by an inspector.

(2) An authorisation under sub-paragraph (1) must be by notice and must require the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato cyst nematodes spreading.

Controls on contaminated bulbs etc.

15. No person may plant any susceptible bulbs or susceptible plants which have been designated as contaminated pursuant to paragraph 10(3), unless they have been subject to the measures set out in Section 3(A) of Annex 3 to Directive 2007/33/EC and an inspector has confirmed by notice that they are no longer contaminated.

Further investigations for the presence of Potato cyst nematodes

16. If any suspected occurrence or confirmed presence of Potato cyst nematodes in Wales results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group, the Welsh Ministers must ensure that the species of Potato cyst nematode and, where applicable, the pathotype and virulence group involved are investigated and confirmed by appropriate methods.

PART 5

Measures for the control of Potato ring rot

Interpretation

17. In this Part—

“certified seed potatoes” (“*tatws hadyd ardystiedig*”) means pre-basic seed potatoes, basic seed potatoes or certified seed potatoes within the meaning given in regulation 2(1) of the Seed Potatoes Regulations;

“contaminated” (“*halogedig*”) means designated by a plant health inspector as contaminated for the purposes of Article 5(1)(a) of Directive 93/85/EEC;

“first growing year” (“*blwyddyn dyfu gyntaf*”), in the case of measures to be taken in relation to a contaminated place of production, means the first growing year following the growing year in which the place of production is designated as contaminated for the purposes of Article 5(1)(a) of Directive 93/85/EEC;

“notice” (“*hysbysiad*”), in relation to a notice to be given by a plant health inspector, means a notice under regulation 15(1);

“object” (“*gwrthrych*”) means any item of machinery, vehicle, vessel, store or other object, including packaging material;

“possibly contaminated” (“*halogedig o bosibl*”) means determined by a plant health inspector to be possibly contaminated for the purposes of Article 5(1)(b) of Directive 93/85/EEC;

“susceptible material” (“*deunydd sy’n dueddol o gael plâu neu glefydau*”) means tubers or plants of *Solanum tuberosum* L.;

“zone” (“*parth*”) means any area, including any individual premises.

Official surveys and testing

18.—(1) The Welsh Ministers must ensure that systematic official surveys for Potato ring rot are carried out in Wales on tubers of *Solanum tuberosum* L. and, where appropriate, on plants of *Solanum tuberosum* L., in accordance with Article 2(1) of Directive 93/85/EEC.

(2) Where the presence of Potato ring rot in susceptible material is suspected, the Welsh Ministers must ensure that—

- (a) official testing is carried out using the method set out in Annex 1 to Directive 93/85/EEC and in accordance with the conditions specified in point 1 of Annex 2 to Directive

93/85/EEC to confirm whether or not it is present,

- (b) the following are retained and appropriately conserved pending completion of the official testing—
 - (i) all tubers sampled, and wherever possible, all plants sampled;
 - (ii) any remaining extract and additional preparation material for the screening tests;
 - (iii) all relevant documentation, and
- (c) pending the confirmation of its presence or the refutation of its suspected presence, where suspect diagnostic visual symptoms of Potato ring rot have been seen or symptoms of Potato ring rot have been identified by a positive immunofluorescence test or other appropriate positive test—
 - (i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato ring rot spreading,
 - (ii) steps are taken to trace the origin of the suspected occurrence, and
 - (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of the plant pest.

(3) A notice may contain measures for the purposes of sub-paragraph (2)(c)(i) to (iii).

Measures to be taken following the confirmation of the presence of Potato ring rot

19.—(1) If the presence of Potato ring rot is confirmed in a sample of susceptible material following official testing carried out pursuant to paragraph 18(2)(a) or sub-paragraph (2), the Welsh Ministers must ensure that—

- (a) the susceptible material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from which the susceptible material was harvested are designated as contaminated by a plant health inspector;
- (b) a plant health inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under paragraph (a), taking into

account the matters set out in point 1 of Annex 3 to Directive 93/85/EEC;

- (c) a zone is demarcated by a plant health inspector on the basis of the designation made under paragraph (a), taking into account the matters set out in point 2 of Annex 3 to Directive 93/85/EEC.

(2) Where susceptible material has been designated as contaminated under sub-paragraph (1)(a), the Welsh Ministers must ensure that testing is carried out on potato stocks which are clonally related to that susceptible material in the manner specified in paragraph 18(2)(a) in order to determine the probable primary source of infection and the extent of the probable contamination.

(3) Any such testing must be carried out on as much susceptible material as is necessary to determine the probable primary source of infection and the extent of the probable contamination.

(4) Any designation by a plant health inspector under this paragraph must be made by notice.

(5) Where any susceptible material or object is determined by a plant health inspector under sub-paragraph (1)(b) to be possibly contaminated, the inspector must by notice designate that material or object as possibly contaminated.

Restrictions in relation to susceptible material or objects contaminated or possibly contaminated with Potato ring rot

20.—(1) No person may knowingly plant or knowingly cause or permit to be planted—

- (a) any contaminated susceptible material, or
- (b) any possibly contaminated susceptible material.

(2) Where susceptible material or an object has been designated as contaminated or possibly contaminated under paragraph 19(1) or (5), a plant health inspector must serve a notice requiring that—

- (a) in the case of contaminated susceptible material, the material be disposed of by destruction or by any other measure that complies with point 1 of Annex 4 to Directive 93/85/EEC;
- (b) in the case of possibly contaminated susceptible material, the material be used or disposed of in accordance with point 2 of Annex 4 to Directive 93/85/EEC;
- (c) in the case of a contaminated object or a possibly contaminated object, the object be—
 - (i) disposed of by destruction, or

- (ii) cleansed and disinfected so that there is no identifiable risk of Potato ring rot surviving or spreading.

(3) Anything cleansed and disinfected in accordance with sub-paragraph (2)(c)(ii) may no longer be treated as contaminated for the purposes of Directive 93/85/EEC.

Measures in relation to a contaminated place of production

21.—(1) A plant health inspector must serve the following notices on any occupier or other person who is in charge of a contaminated place of production—

- (a) in relation to any contaminated field which is part of the place of production, a notice containing the first set of eradication measures or a notice containing the second set of eradication measures;
- (b) in relation to any field which is part of the place of production but is not contaminated, a notice containing the third set of eradication measures.

(2) The first set of eradication measures is—

- (a) the measures to be taken in the field from the date of receipt of the notice and for at least three growing years from the start of the first growing year so as to eliminate volunteer potato plants, and other naturally found host plants, of Potato ring rot,
- (b) a prohibition on the planting of any of the following in the field during that period—
 - (i) potato tubers, plants or true seeds;
 - (ii) naturally found host plants of Potato ring rot;
 - (iii) crops for which there is a risk of Potato ring rot spreading,
- (c) a requirement that in the first potato cropping season following that period, only potatoes for ware production be planted in the field, that they only be planted if the field has been found free from volunteer potato plants and other naturally found host plants of Potato ring rot for at least two consecutive growing years prior to planting, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC, and
- (d) a requirement that in the next potato cropping season only potatoes for seed or ware production be planted in the field following an appropriate rotation cycle (which must be at least two years where the potatoes are to be planted for seed production).

(3) The second set of eradication measures is—

- (a) the measures to be taken in the field from the date of receipt of the notice and for four growing years from the start of the first growing year so as to eliminate volunteer potato plants, and other naturally found host plants, of Potato ring rot,
- (b) a requirement that, during that period, the field be maintained in bare fallow or in permanent pasture with frequent close cutting or intensive grazing, and
- (c) a requirement that in the first potato cropping season following that period, only potatoes for seed or ware production be planted, that they only be planted if the field has been found free from volunteer potato plants and other naturally found host plants of Potato ring rot for at least two consecutive growing years prior to planting, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive 93/85/EEC.

(4) The third set of eradication measures is—

- (a) where a plant health inspector is satisfied that the risk of volunteer potato plants and other naturally found host plants of Potato ring rot has been eliminated, a prohibition on the planting of any of the following in the field from the date of receipt of the notice and for the first growing year—
 - (i) potato tubers, plants or true seeds,
 - (ii) naturally found host plants of Potato ring rot, and
 - (iii) certified seed potatoes, unless they are for ware production only,
- (b) a requirement that, in the subsequent growing year only the following potatoes be planted for seed or ware production—
 - (i) certified seed potatoes, and
 - (ii) seed potatoes officially tested for the absence of Potato ring rot and grown under official control at a place of production which is not a contaminated place of production,
- (c) a requirement that, during at least the third growing year, only certified seed potatoes or seed potatoes grown under official control from certified seed potatoes be planted for seed or ware production, and
- (d) the measures to be taken in the field from the date of receipt of the notice to the end of the third growing year so as to eliminate volunteer potato plants, and naturally found

host plants of Potato ring rot and a requirement that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to Directive 93/85/EEC.

(5) A notice served by a plant health inspector under sub-paragraph (1)(a) containing the first set of eradication measures must additionally—

- (a) include a requirement that all machinery and storage facilities at the place of production which are used for potato production be cleansed and disinfected immediately and following the first growing year, and
- (b) specify the appropriate methods for cleansing and disinfecting the machinery and storage facilities.

(6) The measures which may be specified in a notice under sub-paragraph (1) or (5) may be included in a notice with other appropriate measures.

(7) The person on whom a notice is served pursuant to sub-paragraph (1) must ensure that the measures specified in the notice are taken in the required manner.

(8) Where a plant health inspector serves a notice containing the first set of eradication measures, the Welsh Ministers must ensure that an official survey is carried out in relation to the field mentioned in sub-paragraph (2)(d) in accordance with Article 2 of Directive 93/85/EEC.

Additional measures applicable to a unit of protected crop production

22.—(1) This paragraph applies to the planting of any potato tubers, plants or true seeds in a contaminated unit of protected crop production where it is possible to replace all of the growing medium in the unit.

(2) No person may plant any potato tubers, plants or true seeds in the unit without the written authorisation of a plant health inspector.

(3) A plant health inspector may not grant an authorisation under sub-paragraph (2) unless—

- (a) all of the measures to eliminate Potato ring rot and to remove all host plants which are specified in a notice in relation to the place of production in which the unit is situated have been complied with,
- (b) the growing medium in the unit has been completely changed, and
- (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate Potato ring rot and to remove all host plant material.

(4) Where an authorisation is granted under sub-paragraph (2), the authorisation may specify that only certified seed potatoes, mini-tubers or micro-plants derived from officially tested sources may be used in the production.

Measures to be taken in demarcated zones for the control of Potato ring rot

23.—(1) This paragraph applies where a plant health inspector has demarcated a zone pursuant to paragraph 19(1)(c).

(2) The Welsh Ministers may, by notice, specify further prohibitions, restrictions and other measures which are to apply in the demarcated zone to prevent the risk of Potato ring rot surviving or spreading.

(3) The Welsh Ministers may, in particular, specify in a notice under sub-paragraph (2) that—

- (a) any machinery or storage facilities at premises within the demarcated zone which are used for potato production must be cleansed and disinfected in an appropriate manner so that there is no identifiable risk of Potato ring rot surviving or spreading;
- (b) only certified seed potatoes or seed potatoes grown under official control may be planted during the specified period;
- (c) any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting;
- (d) potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed potatoes and the handling of ware potatoes during the specified period.

(4) A notice under sub-paragraph (2)—

- (a) must be in writing,
- (b) must describe the extent of the demarcated zone,
- (c) must specify the date on which each measure is to take effect and for how long,
- (d) must be published in a manner appropriate to bring it to the attention of the public, and
- (e) may be amended, suspended or revoked, in whole or in part, by further notice.

(5) Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this paragraph, except where the part which is outside the demarcated zone is not in Wales.

(6) A notice published in accordance with sub-paragraph (4) is to be treated as having been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone, and
- (b) any person who operates machinery or carries out any other activity in relation to the production of potatoes within the demarcated zone.

(7) The Welsh Ministers must ensure that—

- (a) premises growing, storing or handling potato tubers, and premises which operate potato machinery under contract, are supervised by plant health inspectors for the duration of the specified period;
- (b) an official survey is carried out during the specified period in accordance with Article 2 of Directive 93/85/EEC;
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

(8) For the purposes of sub-paragraphs (3) and (7), “the specified period” means the period specified in the notice, which must be at least three growing seasons following the year in which the zone was demarcated.

PART 6

Measures for the control of Potato brown rot

24. In this Part—

“certified seed potatoes” (*“tatws hadyd ardystiedig”*) means pre-basic seed potatoes, basic seed potatoes or certified seed potatoes within the meaning given in regulation 2(1) of the Seed Potatoes Regulations;

“contaminated” (*“halogedig”*) means designated by a plant health inspector as contaminated for the purposes of Article 5(1)(a)(ii) of Directive 98/57/EC;

“first growing year” (*“blwyddyn dyfu gyntaf”*), in the case of measures to be taken in relation to a contaminated place of production, means the first growing year following the growing year in which the contaminated place of production is designated as contaminated for the purposes of Article 5(1)(a)(ii) of Directive 98/57/EC;

“notice” (*“hysbysiad”*), in relation to a notice to be given by a plant health inspector, means a notice under regulation 15(1);

“object” (“*gwrthrych*”) means any item of machinery, vehicle, vessel, store or other object, including packaging material;

“possibly contaminated” (“*halogedig o bosibl*”) means determined by a plant health inspector to be possibly contaminated for the purposes of Article 5(1)(a)(iii) or (c)(iii) of Directive 98/57/EC;

“relevant RNQP requirements” (“*gofynion PRHG perthnasol*”), in relation to plants for planting of *Solanum lycopersicum* L., means—

- (a) in the case of plants for planting produced before 14 December 2019, the requirements that applied to those plants for planting under, or by virtue of, Council Directive 2000/29/EC;
- (b) in the case of plants for planting produced on or after 14 December 2019, the requirements that apply to those plants for planting under, or by virtue of, the Phytosanitary Conditions Regulation;

“susceptible material” (“*deunydd sy’n dueddol o gael plâu neu glefydau*”) means plants (including tubers), other than true seed, of *Solanum tuberosum* L. or plants, other than fruit or seeds, of *Solanum lycopersicum* L.;

“zone” (“*parth*”) means any area, including any individual premises.

Official surveys and testing

25.—(1) The Welsh Ministers must ensure that annual systematic official surveys are carried out in Wales to identify the presence of Potato brown rot on susceptible material in accordance with Article 2 of Directive 98/57/EC.

(2) Where the presence of Potato brown rot is suspected, the Welsh Ministers must ensure that—

- (a) official testing is carried out to confirm whether it is present—
 - (i) in the case of susceptible material, using the method set out in Annex 2 to Directive 98/57/EC and in accordance with the conditions specified in point 1 of Annex 3 to Directive 98/57/EC;
 - (ii) in any other case, using any officially approved method;
- (b) pending the confirmation of its presence or the refutation of its suspected presence, where suspect diagnostic visual symptoms of Potato brown rot have been seen, and a positive result in a rapid screening test has been obtained, or a positive result in the screening tests specified in point 2 of Section 1 and

Section 3 of Annex 2 to Directive 98/57/EC has been obtained—

- (i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato brown rot spreading,
- (ii) steps are taken to trace the origin of the suspected occurrence, and
- (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of Potato brown rot.

(3) A notice may contain measures for the purposes of sub-paragraph (2)(b)(i) to (iii).

Measures to be taken following the confirmation of the presence of Potato brown rot

26.—(1) If the presence of Potato brown rot is confirmed following official testing carried out pursuant to paragraph 25(2)(a), the Welsh Ministers must ensure that the actions specified in sub-paragraphs (2) to (4) are taken in accordance with sound scientific principles, the biology of Potato brown rot and the relevant production, marketing and processing systems of host plants of Potato brown rot.

(2) In the case of susceptible material, the actions are—

- (a) an investigation by a plant health inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC;
- (b) further official testing, including on all clonally related seed potato stocks;
- (c) the designation of the following as contaminated by a plant health inspector—
 - (i) the susceptible material and consignment or lot from which the sample was taken;
 - (ii) any objects which have been in contact with that sample;
 - (iii) any unit or field of protected crop production and any place of production of the susceptible material from which the sample was taken;
- (d) a determination by a plant health inspector of the extent of probable contamination through pre- or post-harvest contact, through production, irrigation or spraying links or through clonal relationship;

- (e) the demarcation of a zone by a plant health inspector on the basis of the designation under paragraph (c), the determination made under paragraph (d) and the possible spread of Potato brown rot, in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

(3) In the case of host plants, other than susceptible material, where the production of susceptible material is identified to be at risk by a plant health inspector, the actions are—

- (a) an investigation by a plant health inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to Directive 98/57/EC;
- (b) the designation by a plant health inspector of host plants from which the sample was taken as contaminated;
- (c) a determination of the probable contamination by a plant health inspector;
- (d) the demarcation of a zone by a plant health inspector on the basis of the designation under paragraph (b), the determination made under paragraph (c) and the possible spread of Potato brown rot, in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

(4) In the case of surface water and associated wild solanaceous host plants where production of susceptible material is identified by a plant health inspector to be at risk through irrigation, spraying or flooding of surface water, the actions are—

- (a) an investigation by a plant health inspector to establish the extent of the contamination, which includes an official survey at appropriate times on samples of surface water and, if present, wild solanaceous host plants;
- (b) the designation of surface water from which the sample was taken by a plant health inspector, to the extent appropriate and on the basis of the investigation under paragraph (a);
- (c) a determination by a plant health inspector of the probable contamination on the basis of the designation made under paragraph (b);
- (d) the demarcation of a zone by a plant health inspector on the basis of the designation under paragraph (b), the determination made under paragraph (c) and the possible spread of Potato brown rot, in accordance with point 2(ii) of Annex 5 to Directive 98/57/EC.

Restrictions in relation to susceptible material or objects contaminated or possibly contaminated with Potato brown rot

27.—(1) No person may knowingly plant or knowingly cause or permit to be planted—

- (a) any contaminated susceptible material, or
- (b) any possibly contaminated susceptible material.

(2) Where susceptible material or an object has been designated as contaminated or possibly contaminated under paragraph 26(2), a plant health inspector must serve a notice requiring that—

- (a) in the case of contaminated susceptible material, the material be subjected to any measure that complies with point 1 of Annex 6 to Directive 98/57/EC;
- (b) in the case of possibly contaminated susceptible material, the material be used or disposed of in accordance with point 2 of Annex 6 to Directive 98/57/EC;
- (c) in the case of a contaminated object or a possibly contaminated object, the object be—
 - (i) disposed of by destruction, or
 - (ii) cleansed and disinfected so that there is no identifiable risk of Potato brown rot surviving or spreading.

(3) Anything cleansed and disinfected in accordance with sub-paragraph (2) may no longer be treated as contaminated for the purposes of Directive 98/57/EC.

Measures which may be required in relation to a contaminated place of production

28.—(1) A plant health inspector must serve the following notices on any occupier or other person who is in charge of a contaminated place of production which is in a zone demarcated by a plant health inspector under paragraph 26(2)(e)—

- (a) in relation to a contaminated field or a unit of protected crop production which is part of the place of production, a notice containing the first set of eradication measures or a notice containing the second set of eradication measures;
- (b) in relation to a field which is part of the place of production but is not contaminated and, where the inspector is satisfied that the risk of volunteer potato and tomato plants and other naturally found host plants of Potato brown rot has been eliminated, a notice containing the third set of eradication measures.

(2) The first set of eradication measures is—

- (a) the measures to be taken in the field or the unit from the date of receipt of the notice and for at least four growing years from the start of the first growing year, so as to eliminate any volunteer potato and tomato plants and other host plants, including solanaceous weeds, of Potato brown rot,
 - (b) a prohibition on the planting of any of the following in the field or the unit during that period—
 - (i) potato tubers, plants or true seeds;
 - (ii) tomato plants or seeds;
 - (iii) taking into account the biology of Potato brown rot, other host plants or plants of the species *Brassica* in respect of which there is a risk of Potato brown rot surviving;
 - (iv) crops in respect of which there is a risk of Potato brown rot spreading,
 - (c) a requirement that, in the first potato or tomato cropping season following that period, only potatoes for ware production be planted in the field or the unit, that the potatoes only be planted if the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least the two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC, and
 - (d) a requirement that an appropriate rotation cycle be applied in subsequent potato or tomato cropping seasons, which must be at least two years where potatoes are to be planted for seed production.
- (3) The second set of eradication measures is—
- (a) the measures to be taken in the field or the unit from the date of receipt of the notice and for five growing years from the start of the first growing year so as to eliminate volunteer potato and tomato plants and other naturally found host plants, including solanaceous weeds, of Potato brown rot,
 - (b) a requirement that—
 - (i) during the first three of those growing years, the field or the unit be maintained—
 - (aa) in bare fallow,
 - (bb) in cereals, if the inspector is satisfied that there is no risk of Potato brown rot spreading,

- (cc) in permanent pasture with frequent close cutting or intensive grazing, or
 - (dd) as grass for seed production;
- (ii) during the fourth and fifth growing years, only non-host plants of Potato brown rot in respect of which there is no risk of Potato brown rot surviving or spreading be planted in the field or the unit, and
- (c) a requirement that, in the first potato or tomato cropping season following that period, only potatoes for seed or ware production be planted, that the potatoes only be planted if the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least the two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to Directive 98/57/EC.

(4) The third set of eradication measures is—

- (a) a requirement that from the date of receipt of the notice and for the first growing year no host plants of Potato brown rot be planted or only the following potatoes and tomato plants be planted in the field—
 - (i) certified seed potatoes for ware production;
 - (ii) tomato plants grown from seed which meets the relevant RNQP requirements for fruit production,
- (b) a requirement that, if potatoes are to be planted in the first subsequent growing year, only the following potatoes be planted for seed or ware production in that year—
 - (i) certified seed potatoes;
 - (ii) seed potatoes officially tested for the absence of Potato brown rot and grown under official control at a place of production which is not contaminated,
- (c) a requirement that, if tomato plants are to be planted in the first subsequent growing year, only the following tomato plants be planted for plant or fruit production in that year—
 - (i) tomato plants grown from seed which meets the relevant RNQP requirements;
 - (ii) if vegetatively propagated, tomato plants grown from seed which meets the relevant RNQP requirements and grown under official control at a place of production which is not contaminated,

- (d) a requirement, in the case of potatoes, that, in the second subsequent growing year and any other subsequent growing year, only certified seed potatoes or seed potatoes grown under official control from certified seed potatoes be planted for seed or ware production in the field,
- (e) a requirement, in the case of tomatoes, that during the second subsequent growing year and any other subsequent growing year, only tomato plants grown from seed which meets the relevant RNQP requirements or if, vegetatively propagated, tomato plants grown from seed which meets the relevant RNQP requirements and grown under official control be planted for plant or fruit production in the field,
- (f) the measures to be taken in the field from the date of receipt of the notice to the end of the growing year specified in the notice so as to eliminate volunteer potato plants, and naturally found host plants, of Potato brown rot, and
- (g) official inspections of growing crops at appropriate times and official testing of harvested potatoes in accordance with the method set out in Annex 2 to Directive 98/57/EC.

(5) A notice served by a plant health inspector under sub-paragraph (1)(a) containing the first set of eradication measures must additionally—

- (a) include a requirement that all machinery and storage facilities at the place of production which are used for potato production be cleansed and disinfected immediately and following the first growing year,
- (b) specify the appropriate methods for cleansing and disinfecting the machinery and storage facilities, and
- (c) prohibit any irrigation or spraying programme at the place of production or specify how any irrigation or spraying programme at the place of production must be carried out, for the purpose of preventing the spread of Potato brown rot.

(6) The measures which may be specified in a notice under sub-paragraph (1) or (5) may be included in a notice with other appropriate measures.

(7) The person on whom a notice is served pursuant to sub-paragraph (1) must ensure that the measures specified in the notice are taken in the required manner.

Additional measures in relation to units of protected crop production

29.—(1) This paragraph applies to the planting of any potato tubers, plants or true seeds in a contaminated unit of protected crop production where it is possible to replace all of the growing medium in the unit.

(2) No person may plant any potato tubers, plants or true seeds, tomato plants or seeds or other host plants of Potato brown rot in the unit without the written authorisation of a plant health inspector.

(3) A plant health inspector may not grant an authorisation under sub-paragraph (2) unless—

- (a) all of the measures to eliminate Potato brown rot and to remove all host plants of Potato brown rot which are specified in a notice in relation to the place of production in which the unit is situated have been complied with,
- (b) the growing medium in the unit has been completely changed, and
- (c) the unit and all of the equipment used on the unit have been cleansed and disinfected to eliminate Potato brown rot and remove all host plant material.

(4) An authorisation under sub-paragraph (2) may—

- (a) in relation to potato production, specify that only certified seed potatoes or mini-tubers or micro-plants derived from officially tested sources may be used in the production;
- (b) in relation to tomato production, specify that only seed which meets the relevant RNQP requirements or, if vegetatively propagated, tomato plants produced from seed which meets the relevant RNQP requirements and grown under official control, may be used in the production;
- (c) prohibit any irrigation or spraying programme at the place of production;
- (d) specify how any irrigation or spraying programme at the place of production must be carried out for the purpose of preventing the spread of Potato brown rot.

Measures to be taken in demarcated zones for the control of Potato brown rot

30.—(1) This paragraph applies where a plant health inspector has demarcated a zone in relation to a confirmed finding of Potato brown rot under paragraph 26(3)(d) or (4)(d).

(2) The Welsh Ministers may, by notice, specify further prohibitions, restrictions and other measures

which are to apply in the demarcated zone to prevent the risk of Potato brown rot surviving or spreading.

(3) The Welsh Ministers may, in particular, specify in a notice under sub-paragraph (2) that—

- (a) any machinery or storage facilities at premises within the demarcated zone which are used for growing, storing or handling potato tubers or tomatoes within the zone, or any premises within the zone from which machinery for potato or tomato production is operated under contract, must be cleansed and, where appropriate, disinfected so that there is no identifiable risk of Potato brown rot surviving or spreading;
- (b) in the case of potato crops, only certified seed potatoes or seed potatoes grown under official control may be planted during the specified period;
- (c) potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed potatoes and the handling of ware potatoes during the specified period;
- (d) in the case of tomato crops, only tomato plants grown from seed which meets the relevant RNQP requirements or, if vegetatively propagated, tomato plants produced from such seed and grown under official control may be planted during the specified period;
- (e) contaminated surface water must not be used for the irrigation or the spraying of specified plant material and, where appropriate, other host plants of Potato brown rot, without the prior written authorisation of a plant health inspector;
- (f) if liquid waste discharges have been contaminated, any waste from industrial processing or packaging premises in the zone which handle specified plant material must be disposed of under the supervision of a plant health inspector.

(4) A notice under sub-paragraph (2)—

- (a) must be in writing,
- (b) must describe the extent of the demarcated zone,
- (c) must specify in relation to each measure whether it applies generally or to an area of surface water in the demarcated zone,
- (d) must specify the date on which each measure takes effect and for how long,

- (e) must be published in a manner appropriate to bring it to the attention of the public, and
- (f) may be amended, suspended or revoked, in whole or in part, by further notice.

(5) Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this paragraph, except where the part which is outside the demarcated zone is not in Wales.

(6) A notice published in accordance with sub-paragraph (4) is to be treated as having been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone;
- (b) any person who—
 - (i) has a right to use any contaminated surface water,
 - (ii) has any contaminated surface water on premises within the demarcated zone which the person occupies or is in charge of, and
 - (iii) operates machinery or carries out any other activity in relation to the production of potatoes or tomatoes within the demarcated zone.

(7) The Welsh Ministers may only specify the measures referred to in sub-paragraph (3) where the zone has been demarcated—

- (a) in relation to measures referred to in paragraphs (a) to (d) of that sub-paragraph for the purposes of Article 5(1)(a)(iv) of Directive 98/57/EC;
- (b) in relation to the measures referred to in paragraphs (e) and (f) of that sub-paragraph for the purposes of Article 5(1)(c)(iii) of Directive 98/57/EC.

(8) The Welsh Ministers must ensure that—

- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by plant health inspectors during the specified period;
- (b) an official survey is carried out in accordance with Article 2 of Directive 98/57/EC during the specified period;
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

(9) For the purposes of sub-paragraphs (3) and (8), “the specified period”, in relation to a zone demarcated pursuant to paragraph 26(3)(d) or (4)(d), must be at

least three growing seasons following the year in which the zone was demarcated.

PART 7

Measures relating to Egyptian potatoes

Measures for the purposes of Article 7 of Commission Implementing Decision 2011/787/EC

31.—(1) In this Part, “Egyptian potatoes” means any tubers of *Solanum tuberosum* L., originating in Egypt, which are introduced into the Union territory under Commission Implementing Decision 2011/787/EC.

(2) No professional operator may—

- (a) move any Egyptian potatoes within Wales unless they are labelled to indicate that they originate in Egypt;
- (b) process, prepare, wash or package any Egyptian potatoes at premises in Wales other than at premises that the Welsh Ministers have approved in writing for that purpose.

(3) Sub-paragraph (2)(b) does not apply to the packing or preparation of any Egyptian potatoes in a shop, restaurant, canteen, club, public house, school, hospital, or similar establishment (including a vehicle or a fixed or mobile stall) for delivery to the final consumer.

SCHEDULE 3 Regulation 38(1)(d) to (f)
Offences: relevant provisions in the EU Regulations

PART 1

The EU Plant Health Regulation

<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
Article 5(1) (as read with Article 8(1))	Prohibits the introduction of a Union quarantine pest into the Union territory, the movement of a Union quarantine pest within the Union territory or the holding, multiplication or the release of a Union quarantine pest in the Union territory ⁽¹⁾ .
Article 9(3) (as read with Article 33(1))	Requires professional operators immediately to notify competent authorities of any evidence they may have concerning an imminent danger of the entry of: <ul style="list-style-type: none"> (a) a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) into the Union territory or into a part of the Union territory where it is not yet present, or (b) a protected zone quarantine pest into the respective

⁽¹⁾ The list of Union quarantine pests is set out in Annex 2 to Regulation (EU) 2019/2072 (“Phytosanitary Conditions Regulation”) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants (OJ No. L 319, 10.12.2019, p. 1) (“EU Plant Health Regulation”).

	protected zone.
Article 14(1) (as read with Articles 16 and 33(1))	<p>Requires a professional operator who suspects or becomes aware that:</p> <ul style="list-style-type: none"> (a) a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) is present in plants, plant products or other objects which are under the operator's control; (b) a protected zone quarantine pest is present in plants, plant products or other objects which are under the operator's control in the respective protected zone, <p>immediately to notify the competent authority and take precautionary measures to prevent the establishment and spread of the pest.</p>
Article 14(3)	<p>Requires a professional operator:</p> <ul style="list-style-type: none"> (a) to consult the competent authority where the professional operator has received an official confirmation concerning the presence of a Union quarantine pest in plants, plant products or other objects which are under the operator's control, and

	(b) where applicable, proceed with the actions required under Article 14(4) to (7).
Article 15(1) (as read with Articles 15(2), 16 and 33(1))	Requires a person who is not a professional operator immediately to notify the competent authority where the person becomes aware of, or has reason to suspect: <ul style="list-style-type: none"> (a) the presence of a Union quarantine pest; (b) the presence of a protected zone quarantine pest in the respective protected zone.
Article 32(2)	Prohibits the introduction of a protected zone quarantine pest into the respective protected zone, the movement of a protected zone quarantine pest within the respective protected zone or the holding, multiplication or the release of a protected zone quarantine pest in the respective protected zone ⁽¹⁾ .
Article 37(1) (as read with Article 39, and Article 17 of the Phytosanitary Conditions Regulation)	Prohibits the introduction into the Union territory by a professional operator of a Union regulated non-quarantine pest on plants for planting through which it is transmitted, or the movement of a Union regulated non-quarantine pest within the Union territory by a professional operator on plants for planting

⁽¹⁾ The list of protected zones and the respective protected zone pests is set out in Annex 3 to the Phytosanitary Conditions Regulation.

	through which it is transmitted ⁽¹⁾ .
Article 40(1) (as read with Articles 47 and 48(1))	Prohibits the introduction into the Union territory of certain plants, plant products or other objects if they originate from all or certain third countries or territories ⁽²⁾ .
Article 41(1) (as read with Articles 47 and 48(1))	Prohibits: <ul style="list-style-type: none"> (a) the introduction into the Union territory of certain plants, plant products or other objects from third countries unless the special requirements in respect of those plants, plant products or other objects are fulfilled⁽³⁾; (b) the movement within the Union territory of certain plants, plant products or other objects unless the special requirements in respect of those plants, plant products or other objects are fulfilled⁽⁴⁾.

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- (1) The list of Union regulated non-quarantine pests and the relevant plants for planting, with categories and thresholds, is set out in Annex 4 to the Phytosanitary Conditions Regulation.
- (2) The list of plants, plant products and other objects and the third countries, groups of third countries or specific areas of third countries to which the prohibition applies is set out in Annex 6 to the Phytosanitary Conditions Regulation.
- (3) The list of plants, plant products and other objects originating from third countries and the corresponding special requirements in relation to their introduction into the Union territory is set out in Annex 7 to the Phytosanitary Conditions Regulation.
- (4) The list of plants, plant products and other objects originating in the Union and the corresponding special requirements in relation to their movement within the Union territory is set out in Annex 8 to the Phytosanitary Conditions Regulation.

Article 42(2) (as read with Articles 47 and 48(1))	Prohibits the introduction into the Union territory of high-risk plants, plant products or other objects from third countries ⁽¹⁾ .
Article 43(1)	Prohibits the introduction into the Union territory of wood packaging material, whether or not in use in the transport of objects of any kind, unless it fulfils the specified requirements or is subject to the exemptions provided for in ISPM 15.
Article 45(1), third paragraph (as read with Article 55)	Requires postal services and professional operators involved in sales through distance contracts to make specified information available to their clients through the internet.
Article 53(1) (as read with Articles 57 and 58)	Prohibits: <ul style="list-style-type: none"> (a) the introduction of certain plants, plant products or other objects originating from third countries into certain protected zones; (b) the introduction of certain plants, plant products or other objects originating within the Union territory into certain

(1) The list of high risk plants, plant products and other objects to which the prohibition applies is set out in Annex 1 to Commission Implementing Regulation (EU) 2018/2019 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2031 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation (OJ No. L 323, 19.12.2018, p. 10).

	protected zones ⁽¹⁾ .
Article 54(1) (as read with Articles 57 and 58)	<p>Prohibits:</p> <p>(a) the introduction of certain plants, plant products or other objects into certain protected zones unless the special requirements in respect of those protected zones are fulfilled;</p> <p>(b) the movement of certain plants, plant products or other objects within certain protected zones unless the special requirements in respect of those protected zones are fulfilled⁽²⁾.</p>
Article 59	<p>Requires:</p> <p>(a) vehicles, machinery or packaging material used for specified plants, plant products or other objects moving into or within the Union territory, or through the Union territory, to be free from Union quarantine pests and pests subject to measures</p>

(1) The list of plants, plant products and other objects for these purposes is set out in Annex 9 to the Phytosanitary Conditions Regulation.

(2) The list of plants, plant products and other objects for these purposes is set out in Annex 10 to the Phytosanitary Conditions Regulation.

	<p>adopted pursuant to Article 30(1);</p> <p>(b) vehicles, machinery or packaging material used for specified plants, plant products or other objects moving into or within the protected zones, or through protected zones, to be free from the respective protected zone quarantine pests.</p>
Article 62(1)	Requires a person responsible for a quarantine station or confinement facility to monitor the station or facility and its immediate vicinity for the unintended presence of Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1).
Article 62(2)	Requires a person responsible for a quarantine station or confinement facility to take appropriate action based on the contingency plan referred to in point (e) of Article 61(1) and to comply with the obligations of professional operators in Article 14 where the unintended presence of a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) is found or suspected.
Article 64(1) (as read with Article 64(2))	Prohibits the release of plants, plant products and other objects from quarantine stations or confinement facilities unless authorised by the

	competent authorities.
Article 66(1) (as read with Article 65(3))	Requires certain professional operators to submit an application for registration to the competent authorities.
Article 66(5) (as read with Article 65(3))	<p>Requires registered operators, where relevant:</p> <ul style="list-style-type: none"> (a) to submit an annual update concerning any changes in the data referred to in points (d) and (e) of Article 66(2) or in the statements referred to in points (b) and (c) of Article 66(2); (b) to update the data referred to in point (a) of Article 66(2) no later than 30 days after the change in that data.
Article 69(1) (as read with Articles 65(3) and 69(3))	Requires a professional operator to whom plants, plant products or other objects are supplied that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator who supplied each trade unit.
Article 69(2) (as read with Article 69(3))	Requires a professional operator who is supplying plants, plant products or other objects that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator to whom each trade unit was supplied.
Article 69(4)	Requires professional operators to keep the

	records required pursuant to Article 69(1) to (3) for at least three years.
Article 70(1)	Requires professional operators who are supplied with, or supply, the plants, plant products or other objects referred to in Article 69(1) and (2) to have in place traceability systems or procedures to allow identification of the movements of those plants, plant products and other objects within and between their own premises.
Articles 72(1) and 73	Prohibits the introduction into the Union territory of certain plants, plant products and other objects from third countries unless they are accompanied by a phytosanitary certificate ⁽¹⁾ .
Article 74(1)	Prohibits the introduction of certain plants, plant products and other objects from third countries into certain protected zones unless accompanied by a phytosanitary certificate ⁽²⁾ .
Article 79(1) (as read with Articles 81, 82 and 83)	Prohibits the movement of certain plants, plant products and other objects within the Union territory without a plant passport ⁽³⁾ .
Article 80(1) (as read with Articles 81, 82 and	Prohibits the introduction of certain

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- (1) The list of plants, plant products and other objects for the purposes of Article 72(1) is set out in Part A of Annex 11 to the Phytosanitary Conditions Regulation. The list of plants, plant products and other objects for the purposes of Article 73(1) is set out in Part B of that Annex, but does not include any plants, plant products and other objects in the list set out in Part C of that Annex.
- (2) The list of plants, plant products and other objects for these purposes is set out in Annex 12 to the Phytosanitary Conditions Regulation.
- (3) The list of plants, plant products and other objects for these purposes is set out in Annex 13 to the Phytosanitary Conditions Regulation.

83)	plants, plant products and other objects into certain protected zones, or the movement of certain plants, plant products and other objects within certain protected zones, without a plant passport ⁽¹⁾ .
Article 84(1)	Prohibits professional operators from issuing plant passports unless they are authorised and from issuing plant passports for plants, plant products or other objects for which they are not responsible.
Article 84(3)	Prohibits authorised professional operators from issuing plant passports except at specified premises, collective warehouses or dispatching centres.
Article 85 (as read with Article 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products or other objects unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 86(1) (as read with Articles 86(2) and 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products or other objects to be introduced into, or moved within, a protected zone unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 88	Requires professional operators to attach plant passports to the trade unit of the plants, plant products or other objects

(1) The list of plants, plant products and other objects for these purposes is set out in Annex 14 to the Phytosanitary Conditions Regulation.

	concerned, or where the plants, plant products or other objects are moved in a package, bundle or container, to that package, bundle or container.
Article 90(1)	<p>Requires an authorised operator:</p> <ul style="list-style-type: none"> (a) to identify and monitor the points in its production process and certain other critical points as regards the movement of plants, plant products and other objects where the authorised operator intends to issue a plant passport in respect of those plants, plant products and other objects, and (b) to keep records concerning the identification and monitoring of those points for at least three years.
Article 90(2)	Requires authorised operators to ensure that appropriate training is given to its personnel involved in the examinations referred to in Article 87.
Article 93(1)	Prohibits authorised operators from issuing replacement plant passports unless certain conditions are fulfilled.
Article 93(5)	Requires authorised operators to retain replacement plant passports or their contents for at least three years.

Article 96(1)	<p>Prohibits the marking of wood packaging material, wood or other objects in the Union territory:</p> <ul style="list-style-type: none"> (a) by any professional operator who is not authorised in accordance with Article 98, or (b) otherwise than in the manner required.
Article 97(1)	<p>Prohibits the repairing of wood packaging material:</p> <ul style="list-style-type: none"> (a) by any professional operator who is not authorised in accordance with Article 98, or (b) otherwise than in the manner required.

PART 2

The Official Controls Regulation

<i>Provision of the Official Controls Regulation</i>	<i>Subject matter</i>
Article 47(5) (as read with Articles 5 and 7 of Commission Delegated Regulation (EU) 2019/2122 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market ⁽¹⁾)	Requires the operator responsible for a relevant consignment entering the Union to ensure that it is presented for official controls at the border control post of first arrival into the Union.
Article 50(1)	Requires the operator of a relevant consignment to which Article 47(1) applies to present the original official certificates or documents which are required to accompany the consignment to the competent authorities of the border control post.
Article 50(3)	Prohibits the operator of a relevant consignment from splitting the consignment until official controls have been performed and the Community Health Entry Document ("CHED")

⁽¹⁾ OJ No. L 321, 12.12.2019, p. 45.

has been finalised.

Article 56(1)

Requires the operator of a relevant consignment to complete the relevant part of the CHED.

Article 56(4) (as read with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 on the prior notification of consignments of certain categories of animals and goods entering the Union⁽¹⁾ and regulation 9)

Requires the operator of a relevant consignment to give prior notification to the competent authorities of the border control post of the arrival of the consignment before the physical arrival of the consignment in the Union.

PART 3

Other EU legislation

<i>Provision of EU legislation</i>	<i>Subject matter</i>
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Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination⁽²⁾	
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Article 3 (as read with Articles 4(a), 5(1)(b) and (d), 5(2)(a) and (c) and 6(a))	Requires the operator responsible for a consignment to ensure that a CHED accompanies the consignment before it is released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation.
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(1) OJ No. L 165, 21.6.2019, p. 8.
(2) OJ No. L 250, 30.9.2019, p. 6.

Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union⁽¹⁾	
Article 5(a) and (b)	Requires the operator who is responsible for a relevant consignment that has been given authorisation for onward transportation to enter certain details in the CHED and submit the CHED.
Article 6	Requires the operator who is responsible for a relevant consignment that has been given authorisation for onward transportation to comply with the specified conditions relating to its transportation and storage.
Article 16(1) and (3)	Requires the operator who is responsible for a transhipped relevant consignment to notify the specified information to competent authorities.
Article 22(4)	Requires the operator who is responsible for a relevant consignment that is in transit through the Union territory to take specific measures relating to the transportation of the consignment.

(1) OJ No. L 321, 12.12.2019, p. 73.

SCHEDULE 4 Regulation 38(1)(g)
**Offences relating to EU emergency
decisions**

<i>EU decision</i>		<i>Provision of EU decision</i>
Commission 98/109/EC	Decision	Article 1 (requirements in relation to the introduction into the Union territory of cut flowers of <i>Orchidaceae</i> originating in Thailand)
Commission 2002/757/EC	Decision	Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of susceptible plants and susceptible wood originating in the USA)
		Article 3(4) (requirements in relation to the movement within the Union territory of certain plants, other than seeds, intended for planting and originating in third countries other than the USA)
		Article 4 (prohibition on the introduction into the Union territory of susceptible bark originating in the USA)
		Article 5 (requirements in relation to the movement within the Union territory of certain plants intended for planting originating in the Union)
Commission 2004/200/EC	Decision	Article 1 (prohibition on the movement within the Union territory of seeds of <i>Solanum lycopersicum</i> L. contaminated by Pepino mosaic virus) insofar as it relates to the movement of seeds of <i>Solanum lycopersicum</i> L. that were produced before 14 December 2019 and

are moved within the Union territory at any time before 14 December 2020

Article 3(1) (requirements in relation to the movement of seeds of *Solanum lycopersicum* L. originating in the Union) insofar as it relates to the movement of seeds of *Solanum lycopersicum* L. that were produced before 14 December 2019 and are moved within the Union territory at any time before 14 December 2020

Commission Implementing 2011/787/EU	Decision	Article 1(1) (requirements in relation to the introduction into the Union territory of tubers of <i>Solanum tuberosum</i> L. originating in Egypt)
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Commission Implementing 2012/138/EU	Decision	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries, other than China)
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Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of specified plants originating in China)

Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas or specified plants introduced into the Union territory in accordance with Article 2 or 3)

Commission Implementing 2012/270/EU	Decision	Article 1 (prohibition on the introduction into the Union territory, and the spread within the Union
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territory, of *Epitrix cucumeris* (Harris), *Epitrix papa*. (Orlova-Bienkowskaja), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner))

Article 2(1) (requirements in relation to the introduction into the Union territory of potato tubers originating in third countries where one or more of the specified organisms are known to be present)

Article 3 (requirements in relation to the movement within the Union territory of potato tubers originating in demarcated areas or potato tubers introduced into the Union territory from third countries where one or more of the specified organisms are known to be present)

Commission Implementing 2012/535/EU	Decision	Article 10(1) and (2) (requirements in relation to the movement within the Union territory of susceptible plants, susceptible wood or susceptible bark)
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Commission Implementing 2012/697/EU	Decision	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
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Article 3 (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas)

Commission Implementing (EU) 2015/789	Decision	Article 9 (requirements in relation to the movement within the Union territory of specified plants, other than any which have been grown for the entire
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production cycle *in vitro* or plants belonging to varieties of specified plants listed in Annex III)

Article 9a (requirements in relation to the movement within the Union territory of specified plants which have been grown for the entire production cycle *in vitro* and for at least part of their life in demarcated areas)

Article 15 (prohibition on the introduction of plants for planting, other than seeds, of *Coffea* originating in Costa Rica or Honduras)

Article 16 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is not present)

Article 17(1) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)

Commission
Implementing Decision
(EU) 2015/893

Article 2(a) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)

Article 3(a) (requirements in relation to the introduction into the Union territory of specified wood

originating in third countries where the specified organism is known to be present)

Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas, or specified plants introduced into the Union territory from third countries in accordance with Article 2)

Article 5 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas, specified wood retaining all or part of its round surface which has been introduced into demarcated areas or specified wood packaging material originating in demarcated areas)

Commission
Implementing
(EU) 2016/715

Decision

Article 5 (requirements in relation to the introduction into the Union territory of specified fruits originating in South Africa or Uruguay)

Article 5a (requirements in relation to the introduction into the Union territory of specified fruits originating in Argentina or Brazil)

Commission
Implementing
2017/198/EU

Decision

Article 1 (prohibition on the introduction of *Pseudomonas syringae* pv. actinidiae Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto into the Union territory and its spread within the Union territory)

Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)

Article 3 (requirements in relation to the movement within the Union territory of specified plants originating in the Union or specified plants introduced into the Union territory from third countries in accordance with Article 2)

Commission
Implementing
(EU) 2018/638

Decision

Article 3(a) and (b) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries other than Switzerland)

Commission
Implementing
(EU) 2018/1503

Decision

Article 7(1), (6) and (7) (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas, specified plants introduced into demarcated areas or specified plants introduced into the Union territory from third countries where the specified organism is known to be present in accordance with Article 11)

Article 8 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas or specified wood retaining all or part of its

round surface introduced
into demarcated areas)

Article 9 (requirements in
relation to movement
within the Union territory
of specified wood
packaging material
originating in demarcated
areas)

Article 11 (requirements
in relation to the
introduction into the
Union territory of
specified plants
originating in third
countries where the
specified organism is
known to be present)

Article 12 (requirements
in relation to the
introduction into the
Union territory of
specified wood
originating in third
countries where the
specified organism is
known to be present)

Commission
Implementing
(EU) 2019/1615

Decision

Article 2 (prohibition on
the introduction of
Tomato brown rugose
fruit virus into the Union
territory and its spread
within the Union
territory)

Article 5 (requirements in
relation to the movement
within the Union territory
of specified plants
originating in the Union
territory)

Article 6 (requirements in
relation to the
introduction into the
Union territory of
specified plants
originating in third
countries)

Commission Implementing (EU) 2019/1739	Decision	Article 2 (prohibition on the introduction of Rose rosette virus into the Union territory and its spread within the Union territory)
		Article 5 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
Commission Implementing (EU) 2019/2032	Decision	Article 6 (requirements in relation to the movement within the Union territory of specified plants)
		Article 7 (requirements in relation to the movement of specified wood and isolated bark from an infested zone to a buffer zone or from a demarcated area)
		Article 8 (requirements in relation to the movement of wood packaging material from an infested zone to a buffer zone or from a demarcated area)
		Article 9 (requirements in relation to the introduction into the Union territory of specified plants originating in non-European third countries)
		Article 10 (requirements in relation to the introduction into the Union territory of specified wood or isolated bark originating in non-European third countries)

SCHEDULE 5 Regulation 49

Amendments to secondary legislation relating the marketing of seeds and plant propagating material and plant health fees

PART 1

The Marketing of Vegetable Plant Material Regulations 1995

1.—(1) The Marketing of Vegetable Plant Material Regulations 1995(1) are amended as follows.

(2) In regulation 8—

- (a) in paragraph (2), for “Council Directive 2000/29/EC” substitute “the EU Plant Health Regulation”;
- (b) after paragraph (4) insert—

“(5) In this regulation, “the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants.”

PART 2

The Marketing of Ornamental Plant Propagating Material Regulations 1999

2.—(1) The Marketing of Ornamental Plant Propagating Material Regulations 1999(2) are amended as follows.

(2) In regulation 2(1)—

- (a) in the appropriate place insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants;”;
- (b) omit the definition of “Directive 2000/29/EC”.

(3) In regulation 6A(4), in the definition of “responsible official body”, for the words from “a body” to the end, substitute “, in relation to Wales, the Welsh Ministers”.

(1) S.I. 1995/2652, amended by S.I. 2007/2190 (W. 174); there are other amending instruments but none is relevant.

(2) S.I. 1999/1801; relevant amending instruments are S.I. 2018/974, S.I. 2018/1216 (W. 249) and S.I. 2019/463 (W. 111).

(4) In regulation 7, for paragraph (4) substitute—

“(4) Registration of a supplier on the register of professional operators for the purposes of the EU Plant Health Regulation is deemed to constitute registration for the purposes of paragraph (1) above.”

(5) In regulation 8(3)—

(a) for the words from “notifiable” to “Order 2018” substitute “plant pest of a description specified in Annex 2, 3 or 4 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants,”;

(b) for “article 42 of that Order (notification of the presence or suspected presence of certain plant pests)” substitute “the EU Plant Health Regulation”.

(6) In regulation 9(2), for “Directive 2000/29/EC” substitute “the EU Plant Health Regulation”.

(7) In regulation 12(3), for the words from “if he delivers” to the end substitute “, in relation to Wales, if the supplier delivers a phytosanitary certificate for export or a phytosanitary certificate for re-export to the Welsh Ministers”.

PART 3

The Forest Reproductive Material (Great Britain) Regulations 2002

3.—(1) The Forest Reproductive Material (Great Britain) Regulations 2002⁽¹⁾ are amended as follows.

(2) In regulation 2(2), in the definition of “plant passport”, for “the Plant Health (Forestry) Order 2005” substitute “Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants”.

PART 4

The Seed Potatoes (Wales) Regulations 2016

4.—(1) The Seed Potatoes (Wales) Regulations 2016⁽²⁾ are amended as follows.

(1) S.I. 2002/3026, amended by S.I. 2019/496 (W. 133); there are other amending instruments but none is relevant.

(2) S.I. 2016/106 (W. 52); there are amending instruments but none is relevant..

(2) In regulation 2(1), in the appropriate place insert—

““the Official Controls (Plant Health) Regulations” (“*y Rheoliadau Rheolaethau Swyddogol (Iechyd Planhigion)*”) means the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020;”.

(3) In regulation 13(9), after “these Regulations” insert “, Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants”.

(4) In Schedule 1—

(a) in paragraph 3(d)—

(i) for “Schedule 14 to the Plant Health (Wales) Order 2006” substitute “Part 3 of Schedule 2 to the Official Controls (Plant Health) Regulations”;

(ii) for “that Order” substitute “those Regulations”;

(b) in paragraph 4(1)(b), for “Schedule 15 to the Plant Health (Wales) Order 2006” substitute “Part 4 of Schedule 2 to the Official Controls (Plant Health) Regulations”;

(c) in paragraph 7(1)(b), for “Schedule 15 to the Plant Health (Wales) Order 2006” substitute “Part 4 of Schedule 2 to the Official Controls (Plant Health) Regulations”;

(d) in paragraph 9(1)(b), for “Schedule 15 to the Plant Health (Wales) Order 2006” substitute “Part 4 of Schedule 2 to the Official Controls (Plant Health) Regulations”.

(5) In Schedule 2, in paragraph 10(b), omit “or the Plant Health (Wales) Order 2006”.

(6) In Schedule 5, in paragraph 3(b)—

(a) for “Schedule 14 to the Plant Health (Wales) Order 2006” substitute “Part 3 of Schedule 2 to the Official Controls (Plant Health) Regulations”;

(b) for “that Order” substitute “those Regulations”.

PART 5

The Plant Health (Fees) (Forestry) (Wales) Regulations 2019

5.—(1) The Plant Health (Fees) (Forestry) (Wales) Regulations 2019(1) are amended as follows.

(1) S.I. 2019/497 (W. 114), amended by S.I. 2020/44 (W. 5).

- (2) In regulation 2(1)—
- (a) in the definition of “approved place of inspection” for “article 3 of the Order” substitute “regulation 13(10) of the Official Controls (Plant Health) Regulations 2020”;
 - (b) in the appropriate place insert—
 - ““forestry remedial notice” (*“hysbysiad adfer coedwigaeth”*) means a notice served by a plant health inspector under regulation 10 or 15(1) or (2) of the Official Controls (Plant Health) Regulations 2020;”;
 - (c) for the definition of “licence” substitute—
 - ““licence” (*“trwydded”*) means—
 - (a) a licence referred to in regulation 51(1) of the Official Controls (Plant Health) Regulations 2020 that has been granted by the Welsh Ministers, or
 - (b) an authorisation described in regulation 20(1)(a) or (b)(i) or 21(1)(a) of the Official Controls (Plant Health) Regulations 2020 granted by the Welsh Ministers;”;
 - (d) in the appropriate place insert—
 - ““the Official Controls (Plant Health) Regulations 2020” (*“Rheoliadau Rheolaethau Swyddogol (Iechyd Planhigion) 2020”*) means the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020;”;
 - (e) in the appropriate place insert—
 - ““Phytosanitary Conditions Regulation” (*“Rheoliad Amodau Ffytioiechydol”*) means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants;”;
 - (f) in the appropriate place insert—
 - ““plant health inspector” (*“arolygydd iechyd planhigion”*) means an official plant health officer appointed by the Welsh Ministers for the purposes of the Official Controls (Plant Health) Regulations 2020;”;
 - (g) in the definition of “plant passport authority”, at the end insert “and granted by the Welsh Ministers”;
 - (h) omit the definition of “the Order”;
 - (i) omit the definition of “remedial notice”;
 - (j) in the definition of “remedial work”, for “a remedial notice, or by an inspector under

article 32(1) of the Order” substitute “a forestry remedial notice, or by a plant health inspector under regulation 16(1) of the Official Controls (Plant Health) Regulations 2020”;

- (k) in the definition of “WPM authorisation”, at the end insert “and granted by the Welsh Ministers”.

(3) In regulation 3—

- (a) omit paragraph (6);
- (b) at the end insert—

“(6A) The person on whom a forestry remedial notice is served or who is given notice under regulation 16(1) of the Official Controls (Plant Health) Regulations 2020 must pay the fee specified in Schedule 5 for the carrying out or the monitoring by a plant health inspector of remedial work and associated activities in connection with a controlled consignment.”

PART 6

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

6.—(1) The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017⁽¹⁾ are amended as follows.

(2) In regulation 3(1), omit the definition of “Directive 2000/29/EC”.

(3) Omit regulation 10(6).

(4) In regulation 11(7), for the words from “plant trader” to “2018” substitute “professional operator for the purposes of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants”.

(5) In regulation 15(1)(g), for paragraph (iii) substitute—

“(iii) a plant pest of a description specified in Annex 2, 3 or 4 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants.”

(1) S.I. 2017/691 (W. 163), amended by S.I. 2019/368 (W. 90); there are other amending instruments but none is relevant.

SCHEDULE 6 Regulation 50

Revocation of instruments

<i>Instrument</i>	<i>Reference</i>
The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004	S.I. 2004/1684
The Potatoes Originating in Egypt (Wales) Regulations 2004	S.I. 2004/2245 (W. 209)
The Plant Health (Forestry) Order 2005	S.I. 2005/2517
The Plant Health (Export Certification) (Wales) Order 2006	S.I. 2006/1701 (W. 163)
The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006	S.I. 2006/2695
The Plant Health (Forestry) (Amendment) Order 2006	S.I. 2006/2696
The Plant Health (Forestry) (Amendment) Order 2008	S.I. 2008/644
The Plant Health (Forestry) (Amendment) Order 2009	S.I. 2009/594
The Plant Health (Forestry) (Amendment) (No. 2) Order 2009	S.I. 2009/3020
The Plant Health (Forestry) (Amendment) Order 2012	S.I. 2012/2707

The Plant Health (Export Certification) (Wales) (Amendment) Order 2013	S.I. 2013/1658 (W. 156)
The Plant Health (Miscellaneous Amendments) (Wales) Regulations 2014	S.I. 2014/1463 (W. 144)
The Plant Health (Export Certification) (Wales) (Amendment) Order 2014	S.I. 2014/1759 (W. 174)
The Plant Health (Forestry) (Amendment) (Wales) Order 2015	S.I. 2015/1723 (W. 235)
The Plant Health (Export Certification) (Wales) (Amendment) Order 2016	S.I. 2016/1084 (W. 259)
The Plant Health (Export Certification) (Wales) (Amendment) Order 2018	S.I. 2018/772 (W. 156)
The Plant Health (Wales) Order 2018	S.I. 2018/1064 (W. 223)
The Plant Health (Wales) (Amendment) Order 2019	S.I. 2019/132 (W. 33)
The Plant Health (Forestry) (Amendment) (Wales) Order 2019	S.I. 2019/498 (W. 115)
The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019	S.I. 2019/1153 (W. 202)
The Plant Health (Wales) (Amendment) (No. 2) Order 2019	S.I. 2019/1167 (W. 204)
The Plant Health (Wales) (Amendment) (No. 3) Order 2019	S.I. 2019/1280 (W. 224)

Explanatory Memorandum to The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

5 March 2020

PART 1

1. Description

- 1.1 This instrument implements part of the EU Smarter Rules for Safer Food (“SRSF”) package of regulations, a set of three EU regulations for the protection against animal disease and plant pests. The package will 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, introducing more efficient pest and disease control measures.
- 1.2 The specific purpose of this instrument is to supplement two EU Regulations: Regulation (EU) 2016/2031 on protective measures against pests of plants (“the EU Plant Health Regulation”) and Regulation (EU) 2017/2031 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 EU Official Controls Regulation”).
- 1.3 This instrument will enable official controls and other official activities relating to plant health rules to be carried out in accordance with these Regulations and action to be taken to enforce these rules. It will also enable official controls relating to the deliberate release into the environment of genetically modified organisms (GMOs) for the purpose of food and feed production, to be carried out in accordance with the EU Official Controls Regulation.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 This instrument makes short amendments to Regulations, which have been before the Committee, the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020.

3. Legislative background

3.1 The EU Plant Health Regulation and the EU Official Controls Regulation (“the EU Regulations”) applied directly from 14 December 2019. They replaced Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU. The Directive is implemented in Wales by the Plant Health (Wales) Order 2018 (S.I. 2018/1064)(W.223)) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation to these Orders operates in Scotland, England and Northern Ireland.

3.2 The EU Regulations and the tertiary legislation made under these Regulations was directly applicable in the United Kingdom from 14 December 2019. Whilst domestic legislation is not needed to implement the substantive provisions in this EU legislation, supplementary domestic provisions are necessary to ensure the competent authority in Wales is able to carry out its obligations under the EU Regulations. It also ensures the competent authority is able to enforce these

Regulations and implement derogations to various provisions in the EU legislation which are available to Member States. This instrument contains these supplementary domestic provisions for both plant health and the deliberate release of GMOs. It additionally revokes a number of existing plant health orders, such as the Plant Health (Wales) Order 2018 and the Plant Health (Forestry) Order 2005. There will be separate but parallel legislation for England, Northern Ireland, and Scotland.

3.3 This instrument is related to the Official Controls (Animal, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020, which contains enforcement powers to implement the EU Official Controls Regulations in areas other than plant health and the deliberate release of GMOs. The Welsh Ministers have made other statutory instruments in relation to the EU Official Controls Regulations: the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019; the Meat (Official Control Charges) (Wales) (Amendment) Regulations 2019 and the Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

4. Purpose and intended effect of the legislation

4.1 The EU Regulations establish controls and restrictions, which apply to the import from third countries (countries which are not EU Member States), and internal movement within and between EU Member States, of certain plants, plant pests and other material (such as soil) to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests and diseases.

4.2 There are no other policy options available as the EU Regulations are directly applicable during the Implementation Period established by the European Union (Withdrawal Agreement) Act 2020. The UK is legally obliged under the EU Regulations to ensure that it has sufficient powers to enforce the EU Regulations.

4.3 The EU Regulations revise and improve the current EU plant health legislation. The revised legislation will protect domestic agriculture, horticulture, forestry, parks, gardens and the environment by preventing the entry of harmful plant pests and diseases.

4.4 Part 2 of the instrument designates the Welsh Ministers as the competent authority in Wales for the purposes of the EU Regulations.

4.5 Part 3 makes further provision in relation to consignments of plants, plant products and other objects from third countries, which are subject to official controls and other official activities, on their entry into the EU.

4.6 Part 4 contains powers to enable plant health inspectors appointed by the Welsh Ministers to take measures to prevent the establishment or spread of harmful plant pests in Wales.

4.7 Part 5 imposes additional temporary measures to prevent the entry of certain harmful plant pests into Wales or their establishment in, or spread within, Wales. These measures will further enhance the UK's biosecurity against these pests. This

is permitted under the EU Plant Health Regulation where the UK is faced with an imminent threat of a plant pest entering its territory but the EU has not put in place measures to mitigate that risk or existing EU measures are not considered sufficient to mitigate this risk. The temporary measures include those targeted at plants, plant pests or plant products from third countries and from within the EU and were previously included in the Plant Health (Wales) Order 2018.

4.8 Part 6 makes further provision in relation to the registration of professional operators and the granting of authorisations to professional operators by the Welsh Ministers.

4.9 Part 7 imposes additional requirements in relation to certain solanaceous species (potatoes) to implement the existing EU Control Directives relating to potato wart disease, potato cyst nematodes, potato ring rot and potato brown rot. The detailed requirements are set out in Schedule 2 of the instrument and replicate the existing provisions implementing those Directives in Article 39 of, and Schedules 13 to 16 to, the Plant Health (Wales) Order 2018. Schedule 2 sets out the measures to be taken by the competent authority to control and eradicate these potato pests and diseases, as well as certain prohibitions relating to the planting of potatoes. This maintains existing EU and UK regimes outlining measures on potato control.

4.10 Part 8 imposes additional notification requirements in respect of certain plants and plant products, which are to be brought into Wales. The purpose of notification requirements in regulations 24 and 26 is to facilitate effective official checks of plants and plant products considered to pose a significant risk to plant health in the UK. The notification facilitates intelligence about the introduction of these plants and plant products and facilitates targeted checks of that material. The notification requirements in regulation 25 are required under EU legislation where Member States authorise the introduction of citrus fruits for industrial processing.

4.11 Part 9 sets out general powers of plant health inspectors to enable them to perform official controls and other official activities and enforce the EU Plant Health Regulation, the Official Controls Regulation and these Regulations, including powers of entry and inspection.

4.12 Part 10 sets out miscellaneous provisions, which set out circumstances in which a notice should be served by the competent authority and the enforcement action to be taken by that competent authority.

4.13 Part 11 contains offences and penalties for non-compliance with specified provisions of the EU Plant Health Regulation, the Official Controls Regulation and other EU legislation, as well as the specified provisions of these Regulations.

4.14 These provisions replicate the enforcement mechanisms and penalties for non-compliance set out in the Plant Health (Wales) Order 2018, the Plant Health (Forestry) Order 2005 and other existing domestic plant health legislation. Whilst the EU Plant Health Regulation and EU Official Controls Regulation will not result in any significant changes to the existing EU plant health regime, the new EU Regulations will introduce some new processes, which will necessitate the creation of additional offences to ensure overall consistency.

4.15 The offences included in these Regulations relate to:

- contravention or failure to comply with specified provisions, a provision or condition of a statutory plant health notice, a provision or condition of an authorisation or permit or conditions of a written direction given by the competent authority (Regulations 38 and 39);
- provision of false or misleading information (Regulation 41);
- improper use of plant passports or phytosanitary certificates (Regulation 42);
- obstruction (Regulation 43); and
- disclosure of information held by Her Majesty's Revenue and Customs (HMRC) (Regulation 44), which is an either way offence.

4.16 The penalties for any offence under these Regulations mirror those included in the Plant Health (Wales) Order 2018 and the Plant Health (Forestry) Order 2005 and are non-custodial (unlimited fines), except for the penalty, which applies to the non-disclosure of certain information received from HMRC under information gateway provisions. This penalty for this either way offence includes custodial terms.

4.17 Part 12 deals with minor and consequential amendments to secondary legislation, revocations and transitional provisions in relation to plant health legislation.

4.18 Part 13 makes amendments to a previous instrument, the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020. One amendment adds a reference to the deliberate release into the environment of GMOs for the purpose of food and feed production to the scope of "relevant legislation" as defined in regulation 2(1) of that instrument. The effect is to extend the designation of the Welsh Ministers as competent authority under the EU Official Controls Regulation, and to extend the relevant provisions in relation to enforcement in that instrument to the deliberate release of GMOs. Another amendment corrects a minor error in the text of regulation 13 of that instrument.

4.19 Schedule 5 sets out the amendments made by this instrument to secondary legislation, including the Marketing of Vegetable Plant Material Regulations 1995, the Marketing of Ornamental Plant Propagating Material Regulations 1999, the Forest Reproductive Material (Great Britain) Regulations 2002, the Seed Potatoes (Wales) Regulations 2016, the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019.

4.20 Schedule 6 lists the orders revoked by this instrument, which include the Plant Health (Wales) Order 2018, the Plant Health (Forestry) Order 2005, the Plant Health (Export Certification) (Wales) Order 2006, the Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004 and the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006.

5. Consultation

5.1 There has been no formal consultation on this instrument as it only makes minor changes to current practice. With regard to GMOs, there has been no formal consultation on this instrument as it makes no significant changes to the current official control practices.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Policy

6.1 The two policy changes are:

- a) Creation of new (or continuation of existing) criminal sanctions to ensure future enforcement of the new EU Regulations: addresses negative externality risks by ensuring there is full compliance with new EU PHR (e.g. additional certification) requirements;
- b) UK specific tightly defined definition of “close proximity” threshold for plant passporting: addresses information failure (by improving information on plant biosecurity and traceability of plants being moved at distance within the UK, where currently these plants cannot be traced) and sharpens incentives to improve plant biosecurity

6.2 There are no other policy options available as the EU Regulations are directly applicable during the Implementation Period established by the European Union (Withdrawal Agreement) Act 2020. The UK is legally obliged under the EU Regulations to ensure that it has sufficient powers to enforce the EU Regulations.

6.3 Areas where specific policy options have been made in areas requiring domestic legislation include:

Fees and Charges

6.4 More data is required before new fees and charges can be introduced, therefore, no new fees and charges will be introduced at this stage and there will be no impact on businesses.

Sanctions and Penalties.

6.5 The preferred option is to only use criminal sanctions, so the existing sanctions will remain in place and any new sanctions introduced will be criminal based. This option results in changes for business and, therefore, the impact is analysed below:

6.6 There are **four** policy options on the sanctions approach for enforcing the new plant health aspects of SRSF. Currently, the UK uses non-custodial criminal sanctions for plant health related matters. This is as opposed to civil sanctions, which can cover financial penalties as well as remedial action.

6.7 **Option 1**, the preferred option, is to only use criminal sanctions, so the existing sanctions will remain in place and any new sanctions introduced will be criminal based. This is essentially keeping the existing system, which is the simplest for officials to retain given the industry’s familiarity with such a system. In the future, this sanctions approach will be reviewed, with the possible phasing in of civil

sanctions at a later date if deemed appropriate. This approach will have negligible impact on the criminal justice system or industry. Consequentially, impacts of the instrument's sanction provisions are only quantified in terms of familiarisation costs in this RIA.

6.8 **Option 2** is to retain existing criminal sanctions with the addition of civil sanctions.

6.9 **Option 3**, is to use only civil sanctions which would be easy to apply but are limited in scope and flexibility (and would have been a huge upheaval of the current regime).

6.10 **Option 4**, is to maintain all current criminal sanctions and not introduce any additional sanctions for the new areas.

Exemptions to registration requirements

6.11 This exemption will continue to be applied as it is currently. Therefore, this results in no changes in the current regime and, therefore, there is no impact to business.

6.12 The PHR's provisions on the official register of professional operators (Article 65.3) sets out those operators who fulfil certain criteria can be exempted from authorisation.

6.13 The same article introduces a new provision for Member States not to apply this exemption if they so choose. The businesses, which would be impacted by removal of the exemption, are small, numerous and difficult to trace. There are two policy options:

6.14 **Option 1**, the preferred option, is to choose not to routinely apply the new provision and continue to allow the exemption to these operators. This would not preclude introducing requirements in the future for such operators if a specific biosecurity risk was identified, which meant such measures were proportionate.

6.15 **Option 2** is to apply the new provision and not allow the exception to these operators. This is deemed onerous and not necessary at this stage. The operators related to this exemption present a low biosecurity risk and the uplifted resource required to register them would be disproportionate to this risk. In addition, there would be additional costs to these operators.

Issuing Plant Passports at the Place of Destination or Point of Entry

6.16 The preferred option results in no changes in the current regime and, therefore, there is no impact to business.

6.17 Some regulated goods will require a Plant Passport (PP) when they reach the UK from a third country.

6.18 If the plant or plant product requires a PP, the Phytosanitary Certificate (PC), which it already holds, will need to be replaced by a PP upon entry to the UK.

6.19 Under Article 94(1) this can take place at the place of destination once the consignment has cleared official controls at the border. This is what happens currently. Furthermore, under Article 84(3) it states that operators may issue PPs at premises, which are not their own where Article 94(1) applies, if they are authorised to do so.

6.20 There is a derogation under Article 94(2) for a PC to be certified at the place of entry and accompany the consignment up until a PP is issued (only within that Member State). However, this is unfeasible for the UK, as in most cases consignments do not travel with their original PC, so a certified copy could not be issued. Therefore, the derogation will not be applied.

Close Proximity

6.21 The preferred option of defining close proximity as a 10-mile radius, results in changes for business and, therefore, the impact is analysed.

6.22 Under PHR Article 82, there is an option to exempt the movement of plants between premises of the same professional operator from requiring PPs if those premises are within close proximity. The definition of close proximity is at the discretion of the Member State.

6.23 Our recommendation of close proximity would be premises within a 10-mile radius, on the basis it was favoured by some stakeholders, it is a reasonable definition of close proximity, has little legal risk if challenged, and it provides high levels of biosecurity. It is similar to an existing measures based on operators moving material within the same locality but it would have the advantage of not affecting stakeholders whose premises lay on county lines and of standardising the approach across all operators. This definition will be reviewed to ensure it is appropriate.

6.24 Alternative options proposed following stakeholder engagement, include a 50-mile radius, or defining the entire UK as being in close proximity. Some other EU Member states favour this approach as it can be easier to implement but we have decided the biosecurity benefits of this approach outweigh these arguments.

Justice System Impact Assessment

6.25 A Justice System Impact Assessment has been completed. The number of cases brought forward for enforcement action is anticipated to be minimal. There have been no cases in recent years using the existing criminal offences in the Plant Health (Wales) Order 2018 and the Plant Health (Forestry) Order 2005 (as it applies to Wales). Most contraventions are successfully dealt with through statutory plant health notices and informal warnings.

7. Costs and benefits

The costs and benefits have been assessed against a baseline ‘business as usual’ scenario in which no policy changes are made.

Assessment of Costs to Businesses and Authorities

EU Official Controls Regulation – The Criminal Sanctions Future Enforcement Regime

7.1 The current working assumption is that criminal sanctions will be used¹ – all existing sanctions would remain and then new criminal sanctions would be introduced where needed for exports and the provision of information to travellers and clients of postal services etc.

7.2 If we assume businesses will fully comply with these criminal sanctions we, therefore, need to assess the impact for all plant health related businesses, which are affected by the need to familiarise themselves with these new criminal sanctions:

- There will be a more specific requirement to those businesses who currently don't need to comply with particular criminal sanctions, to familiarise themselves with the new offences, which these criminal sanctions will apply (for exports and provision of information to travellers and clients of postal services);
- There may also be a general requirement across all plant health related businesses to familiarise themselves with any general edits to phrases, definitions and references in the legislation.

7.3 We estimate there are around 23,470 businesses affected in Wales. We estimate around 3,123 of these Welsh businesses may require more time to familiarise themselves with the new criminal sanctions as they export (and a further 29 Authorities, made up of 22 Local Authorities, 2 Port Authorities and 5 OCR laboratories). The remaining 20,347 businesses are expected only to familiarise themselves more generally.

7.4 We assume the 3,123 specific businesses and 29 Authorities will need two hours on average (given that there will be guidance on Gov.uk and a work-through for stakeholders to disseminate and simplify for businesses) for 1 employee to familiarise themselves with the new criminal sanctions at a one-off year 1 cost of £34.62 per business (£17.31 x 2 hours)². For the other 20,347 businesses, we assume they will need ½ hour per company for one employee to familiarise themselves more generally at a one-off year 1 cost of £8.33 per business³.

¹ Essentially this option would be the same as the existing system. It would utilise the statutory plant health notices, which are a device, which can be used in all cases and offers perhaps the most flexibility to deal with any situation that arises. It would also likely be the easiest option for officials to introduce and to implement given the familiarity with such a system.

² Average of median wages for “Managers and directors in retail and wholesale” (£11.48 per hour) and “Administrative occupations: Office managers and supervisors” (£15.15 per hour), ASHE 2019. A 30% uplift to account for non-wage labour costs is then applied to the average.

³ Either 2 hours or ½ hour for 1 employee has been used as an average across all affected businesses, which we judge to be sensible assumption given that there will be supplementary guidance and dissemination efforts to help businesses familiarise

Type of Business (affected in England)	Number of Businesses Affected	Time Cost	Total Year 1 Cost
General PH Related	295	0.5 hours	£2553.23
Import/Exporter business	74	2 hours	£2561.88
Authorities	29	2 hours	£1004
Total Cost Across Businesses	398		£6119.11

EU PH Regulation – Close Proximity Rule for plant passporting

7.5 “Close proximity” (for the purposes of the movement of plants, plant products and other objects between premises of the same authorised operator) can be defined specifically by individual Member States and a 10-mile radius has been chosen in order to reduce plant biosecurity risks. Also, in practical terms, it was deemed to be closer to the meaning/purpose of the Regulations than the other options presented as definitions of close proximity.

7.6 We need to assess the extent this creates an additional plant passporting requirement across businesses who trade in plants/plant products, given that, for many of these traded commodities, this is a much tighter definition of close proximity than under existing legislation (e.g. conifer timber with bark can currently be moved anywhere within GB subject to a ‘local movement exemption’, based on the UK’s interpretation of existing regulations, and so no PPs have been required).

7.7 Timber

Since 14 December 2019, it has been a requirement to provide PP for movements of timber within Wales (or indeed GB). Forestry Commission estimate around 26,000 movements within Wales per year would additionally require a PP (based on 650,000 green tonnes of conifer timber with bark⁴ and 25 tonnes carried per load. A 10% reduction is applied to take into account the 10-mile radius resulting in around 23,400 PPs.

Timber Type	Overall Quantity	Plant Passports per Load	Plant Passports	PPs (10% reduction)
Conifer with Bark	650,000 tonnes	25 tonnes per lorry	26,000	23,400
Total			26,000	23,400

7.9 On this basis, we can estimate the costs involved to businesses in Wales for these additional PPs. The costs relate to the time needed to complete these additional PPs. If we again assume a wage of £17.31 per hour (as above) and that

themselves. We should note that some businesses may take less time and others businesses may either take more time or use more than 1 employee.

⁴ FC Statistics 2018 (Table 2.12, consumption of softwood by country, 2017 data)

the time need to complete a PP is around 5 minutes⁵, then the time cost is estimated at £1.44 per PP. If we apply this to 23,400 PPs, then this results in a **cost to businesses of £33,696 per year**.

[Note that if we do not apply the 10% reduction, then the estimated number of additional PPs would be 26,000 reported above, resulting in a £37,440 per year cost to businesses.]

Plants and Plant Products (excluding Timber)

7.10 The data is not readily available to estimate additional PP requirements for plants/plant products, because of the more tightly defined close proximity threshold, as there is currently no official data collection required. This is further complicated by the method of transport. PPs will be required for either individual plants, per tray of the same plants, per pallet of the same plants or per truck/lorry containing the same plants.

7.11 It has been estimated a business time cost per PP of £1.44 per based on the assumption it would take five minutes to complete each PP.

Assessment of Benefits to Businesses

7.12 We do not expect any additional benefits from the criminal sanctions future enforcement regime (as full compliance is already assumed).

7.13 The tighter definition of close proximity, resulting in this additional plant passporting requirement, is expected to sharpen incentives to reduce the risks of plant pests and diseases through improved plant biosecurity information and traceability. The overall value of maintaining healthy plants and trees in the UK is £9bn per year⁶ and we would expect this sharpening of incentives to contribute to the protection of this overall value to society.

7.14 The main biosecurity benefit will arise from the implementation of the directly applicable Plant Health Regulations. The directly applicable aspects are out of scope of this assessment, although the instrument allows these Regulations to be enforced.

Brief Assessment of Distributional Impacts

7.15 There are unlikely to be any significant distributional impacts arising from this instrument. We believe there is nothing in the instrument that will lead to transfers between different interest groups, businesses or sectors.

⁵ Likely to be an overestimate (given that FC envisage that PPs will be pre-populated, printed and included on a delivery note)

⁶ Comprised of an estimated £4bn of Gross Value Added (GVA) from crop and horticulture sectors, £1bn of GVA from forestry and logging sector, and around £4bn of social/environmental value from forestry and trees from carbon sequestration, air pollution absorption, biodiversity, recreation and landscape value (excluding many elements that cannot easily be monetised – water quality/availability, noise, flood and heat reduction, physical and mental wellbeing, and cultural, symbolic education benefits). Estimates are based on Agriculture in the UK, Forestry Statistics and Tree Health Resilience Strategy publications.

Brief Assessment of Small Business Impacts

7.16 Familiarisation costs resulting from the new criminal sanctions, at the level of an individual firm, are assumed to be relatively low (up to £34.62 for an individual firm, based on the £17.31 per hour cost documented in the section, which estimates these costs above). Although such cost may affect smaller businesses relatively more, they are still small costs per business. In addition, the costs of additional PPs as a result of the new more tightly defined close proximity threshold are expected mainly to affect the larger-scale businesses in the sector.

Wider impacts on Competent Authorities

7.17 The rules introduced by the EU Regulations are directed at national enforcement authorities and professional operators in industry, ranging from retailers to plant breeders, etc. Competent authorities would benefit from implementation of the EU Regulations as an improved legal framework that sets out all official controls rules in one place. National administrations tasked with official controls and other official duties (phytosanitary monitoring and action) will also benefit from improved and more effective enforcement tools.

Wider impacts on Professional Operators

7.18 Operators (from across a wide spectrum e.g. retailers, plant, growers and traders) will benefit from the increased efficiency of competent authorities resulting from streamlining and simplification of the legislative framework and from the risk based operation of the administrations. In particular, OCR provisions specify that competent authorities minimise administrative burdens and operational disruption for operators when performing controls. Subsequently operators will also be called upon to contribute to the financing of the national control systems through control fees. The mandatory fees system remains essentially the same as the current one, in other words the scope of the mandatory fees has not been expanded by the OCR, although the scope of regulated material has been expanded by the PHR. Furthermore, operators will benefit from a higher level of transparency about the method and data used to establish fees and the amount applied to each category of operators.

Wider national impacts

7.19 This instrument will allow for the successful implementation of the EU Regulations, which aim to ensure a high level of health and safety standards along the agri-food chain by providing a consistent approach. The EU Regulations will contribute to more consistent and effective enforcement of plant health law. In doing so there will be increased standards of biosecurity and environmental protection and wider benefits across all levels of the food production chain (including final consumer). The official controls that the instrument enables will also strengthen the risk-based approach to protection of biosecurity, which is a key interest.

8. Consultation

8.1 There has been no formal consultation on this instrument as it only makes minor changes to current practice.

9. Competition Assessment

9.1 A competition assessment was conducted and it was concluded the regulation is unlikely to have a significant detrimental effect on competition.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

10. Post implementation review

10.1 The monitoring of the instrument will be through the normal course of business as no substantive changes to the current procedures or standards are being introduced.

SL(5)518 – The Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020

Background and Purpose

This Order amends Schedule 2 to the Wildlife and Countryside Act 1981 ("the Act").

Part 1 of that Schedule lists the birds that may be killed or taken outside the close season. The close season is defined in section 2(4) of the Act.

Article 2 of this Order amends the entry for White-fronted Goose (*Anser Albifrons*) in Part 1 of Schedule 2 to the Act, so that Greenland White-fronted Goose are exempt from that Schedule. The effect of this amendment is to make it an offence in Wales (under section 1 of the Act) to kill or take (or to injure in the course of an attempt to kill) Greenland White-fronted Goose outside the close season for White-fronted Goose.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be interest to the Assembly.

1. There are inconsistencies between the meaning of the Welsh and English texts of the third paragraph of the Explanatory Note. The Welsh language text states that article 2 amends the entry for White-fronted Goose in Part 1 of Schedule 2 to the Act, therefore that entry is no longer applicable in relation to Wales. This is not the case. It is so that Greenland White-fronted Goose are exempt from that Schedule.

2. Secondly, in the Welsh text, it notes that the effect of the amendment is to make it an offence in Wales (under section 1 of the Act) to kill or take (or to injure in the course of an attempt to kill) any subspecies of the White-fronted Goose, as opposed to naming the Greenland White-fronted Goose specifically.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee



Cynulliad Cenedlaethol Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales
Legislation, Justice and Constitution Committee



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 272 (W. 64)

WILDLIFE, WALES

**The Wildlife and Countryside Act
1981 (Variation of Schedule 2)
(Wales) Order 2020**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 2 to the Wildlife and Countryside Act 1981 (“the Act”).

Part 1 of that Schedule lists the birds that may be killed or taken outside the close season. The close season is defined in section 2(4) of the Act.

Article 2 of this Order amends the entry for White-fronted Goose (*Anser Albifrons*) in Part 1 of Schedule 2 to the Act, so that Greenland White-fronted Goose are exempt from that Schedule. The effect of this amendment is to make it an offence in Wales (under section 1 of the Act) to kill or take (or to injure in the course of an attempt to kill) Greenland White-fronted Goose outside the close season for White-fronted Goose.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government (Land, Nature, and Forestry Division), Rhodfa Padarn, Llanbadarn Fawr, Aberystwyth, Ceredigion, SY23 3UR.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 272 (W. 64)

WILDLIFE, WALES

**The Wildlife and Countryside Act
1981 (Variation of Schedule 2)
(Wales) Order 2020**

Made 10 March 2020

*Laid before the National Assembly for
Wales* 11 March 2020

Coming into force in accordance with article 1

The Welsh Ministers make the following Order in exercise of the powers conferred by section 22(1) of the Wildlife and Countryside Act 1981(1).

For the purposes of section 26(4)(a) of that Act, the Welsh Ministers do not consider any local authority to be affected by this Order. In accordance with that section, the Welsh Ministers have given any other person affected an opportunity to submit objections or representations with respect to the subject matter of this Order.

(1) 1981 c. 69. Section 22(1) was amended by section 47(5) of the Natural Environment and Rural Communities Act 2006 (c. 16). The functions of the Secretary of State under section 22(1) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

In accordance with section 26(4)(b) of that Act, the Welsh Ministers have consulted the Joint Nature Conservation Committee, and the Natural Resources Body for Wales, being the advisory bodies⁽¹⁾ that the Welsh Ministers consider are best able to advise them whether this Order should be made.

Title and commencement

1. The title of this Order is the Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020, and it comes into force 21 days after the date it was laid.

Variation of Schedule 2

2. In Schedule 2 to the Wildlife and Countryside Act 1981 (birds which may be killed or taken) in Part 1 (outside the close season) —

- (a) in column 1, after “except” omit “, in England,”;
- (b) in column 2, after “except” omit “, in England,”.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
10 March 2020

(1) See the definition of “advisory body” in sections 23(3) and 27(1) of the Wildlife and Countryside Act 1981. The Joint Nature Conservation Committee was established under section 128(4) of the Environmental Protection Act 1990 (c. 43) and continues in existence (albeit reconstituted) under section 31 of the Natural Environment and Rural Communities Act 2006. The Countryside Council for Wales was abolished, and all of its functions were transferred to the Natural Resources Body for Wales, by the Natural Resources Body for Wales (Functions) Order 2013 (W.S.I. 2013/755 (W.90)). The Natural Resources Body for Wales was created by the Natural Resources Body for Wales (Establishment) Order 2012 (W.S.I. 2012/1903 (W. 230)) as amended by W.S.I. 2013/755 (W.90).

Explanatory Memorandum to the Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020 to remove the 'Greenland White Fronted Goose' from Schedule 2

This Explanatory Memorandum has been prepared by the Biodiversity and Nature Conservation Branch and is laid before the National Assembly for Wales 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 Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020

I am satisfied that the benefits outweigh any costs.

Lesley Griffiths,

Minister of Energy, Environment and Rural Affairs

11 March 2020

1. Description

This Order amends Part 1 of Schedule 2 to the Wildlife and Countryside Act 1981 (“the 1981 Act”). It, in effect, impose a statutory ban on the shooting of Greenland White-fronted Geese (WfG) in Wales throughout the year (including in the ‘open season’). The statutory ban comes into force 21 days after the SI is laid.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These amendments are being introduced in view of the poor and declining global status of Greenland White-fronted Geese and the important populations of the geese which over-winter in Wales.

The legislation is amending the Wildlife and Countryside Act 1981 in relation to Wales only.

3. Legislative background

Section 1(1) of the 1981 Act sets out a general position that it is an offence to, amongst other things, kill any wild bird.

Section 2 of the 1981 Act provides exceptions to that general position. A person is not guilty of an offence under section 1 by reason of killing a wild bird if that bird is listed within Part 1 of Schedule 2 to the 1981 Act **and** the bird was killed outside the closed season for that bird.

WfG (*Anser albifrons*) is listed in Part 1 of Schedule 2 to the 1981 Act in relation to England and Wales (but not Scotland). As such, it is currently lawful to kill any WfG in England and Wales outside the closed season for that bird.

Section 22(1) of the 1981 Act is a power to amend the Schedules to that Act (including Schedule 2). Originally conferred on the Secretary of State, this function was, in relation to Wales, transferred to the National Assembly for Wales by virtue of Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (“GOWA”), those functions are now exercisable by the Welsh Ministers.

An Order under section 22(1) of the 1981 Act can be used to amend Part 1 of Schedule 2. This SI amends the entry for White-fronted Goose in that Schedule so that Greenland White-fronted Goose are exempt. The effect of this is to make it an offence (under section 1(1) of the 1981 Act) to kill or take (or injure in the course

of attempt to kill) Greenland White-fronted Goose in any part of Wales outside of the close season for White-fronted goose.

This statutory instrument is subject to annulment of the Assembly (negative procedure). The Order does not amend any provision of an Assembly Act or Measure, but they do make minor amendments to the Wildlife and Countryside Act 1981. They are limited in scope to the protection of an endangered migratory species of goose.

4. Purpose & intended effect of the legislation

The EC Wild Birds Directive (Council Directive 79/409/EEC now codified in Directive 2009/147/EC) provides a mechanism for protecting all wild bird species naturally occurring in the European Union. It was adopted as a response to increasing concern about the declines in Europe's wild bird populations resulting from pollution, loss of habitats as well as their unsustainable exploitation. It sets broad objectives for a wide range of activities designed to protect wild birds.

Two types of White-fronted Geese (WfG) (*Anser albifrons*) occur in the UK. The Eurasian (or European) race (*Anser albifrons albifrons*) and the Greenland race (*Anser albifrons flavirostris*). The global population status of the two races is significantly different. Eurasian White-fronted Geese (EWfG) are very much more numerous whereas the global population of Greenland White-fronted Geese (GWfG) is categorised as “Endangered” using the IUCN’s (International Union for the Conservation of Nature) global Red List criteria.

Despite the current high conservation concern regarding the Greenland race, WfG were listed on Annex II, Part B of the Birds Directive 2009/147/EC meaning that, in respect of the UK, hunting of both races of WfG could be authorised under article 7(3) of the Directive. This part of the Directive is transposed into domestic law under section 2, and Part 1 of Schedule 2, of the 1981 Act. This means WfG may be killed or taken outside of the ‘Closed Season’ in England and Wales. The closed season being 1 February – 31 August each year or, in relation to wild ducks and wild geese, in or over any area below high-water mark of ordinary spring tides between 21 February – 31 August. This legislation means that it would be a criminal offence to take or kill GWfG in Wales at any time of the year.

This legislation recognises the difficulty of distinguishing the two races under field conditions, and would translate into law the British Association for Shooting and Conservation (BASC) voluntary moratorium on the shooting of WfG in Wales.

This proposal also reflects legislation in Scotland and Northern Ireland where WfG are fully protected at all times by Wildlife and Countryside Act 1981 (as amended) and by the Wildlife (Northern Ireland) Order 1985.

This proposal also reflects the status of GWfG as listed under Table 1, Column 2A* of the African-Eurasian Waterbirds Agreement (AEWA) Action Plan; it is a legal requirement for the UK to give protection to GWfG.

The UK Government have made their own Order, the Wildlife and Countryside Act 1981 (Variation of Schedule 2) (England) Order 2020 ("the England Order") in relation to England to introduce the ban in England. The England Order will come into force ahead of this Order, however has no practical effect as both Orders will be made and will come into force during the close season, which runs until 1 September 2020. By removing the references to England in Part 1 of Schedule 2 of the Wildlife and Countryside Act 1981 (as inserted by the England Order), the Wales Order ensures that the ban will apply across England and Wales. This approach is the minimum necessary to achieve the desired aim here and satisfy the concerns of the AEWA.

5. Consultation with Joint Nature Conservation Committee (JNCC)

A full consultation with the JNCC (statutory consultee) was undertaken in 2016 to seek views on different options to impose a statutory ban on the shooting of White-fronted Goose (WfG) in Wales throughout the year (including in the 'open season'), as well as on an option to continue to support the current voluntary shooting ban. No response was received.

A further consultation took place in October 2019 and JNCC confirmed they were content with our approach.

REGULATORY IMPACT ASSESSMENT

Options

Option 0

Do nothing. Maintain non-statutory voluntary moratorium on shooting of GWfG

Option 1

Ban shooting of GWfG in the parts of Wales that they use.

Option 2

Ban shooting of all WfG in all or specified parts of Wales throughout the year (including in the 'open season').

Option 3

Remove GWfG from the list of birds that may be shot in the open season.

Costs and Benefits

Option 0: Do nothing. Maintain non-statutory voluntary ban on shooting of GWfG

Costs:

This option would mean that Welsh Minsters would not address the AWEA complaint and would be out of step with Defra provision in England. Although the voluntary restraint on the shooting of GWfG is appreciated and deemed to be a responsible approach, AEWA does not believe that a continuation of a voluntary ban provides adequate, sustainable provision for the management of GWfG. Reputational damage and litigation (e.g. JR) could follow.

Benefits:

No additional costs for businesses or individuals over and above current commitments. There are currently no legal consequences to wildfowlers should they decide not to comply with the voluntary moratorium on shooting GWfG.

Risk high

Option 1: Ban shooting of GWfG in the parts of Wales that they use.

Costs:

WG considered this approach previously but GWfG are now known to range more widely than was previously believed.

Benefits:

Shooting of the plentiful EWfG is accepted by AEWA as a component of the revenue-generating shooting industry. This option would allow shooting of EWfG to continue across Wales and would therefore not impact on these shooting interests. Although this option would allow shooting of EWfG to continue and would therefore not impact on shooting interests, officials have been advised that it is very difficult to distinguish between the two species in flight.

Risk medium

Option 2: Ban shooting of all WfG in all or specified parts of Wales throughout the year (including in the 'open season').

Costs

Shooting of the plentiful EWfG is accepted by AEWA as a component of the recreational, revenue-generating shooting industry. Officials have not received any advice to indicate that EWFG are under threat from shooting activities. Risk of alienating wildfowlers who currently contribute considerably to monitoring and conservation effort re GWfG

Benefits

None. Such a measure could be seen as a disproportionate response with regards to wildfowl management.

Risk high

Option 3: Remove GWfG from the list of birds that may be shot in the open season. This would be achieved by changing the entry "Whitefronted goose to European Whitefronted Goose in the list of birds that may be shot.

Costs

Under the existing voluntary moratorium shooters do not target GWfG, but are able to shoot EWfG in the 'open season'; in practice this option would represent 'no change' to compliant, responsible wildfowlers. The challenge of differentiating between the two races of WfG would fall on shooters in the field, with consequent risk of breaking the law. However quarry identification is a familiar and integral part of wildfowling, and is widely applied to a range of species. The two different races of WfG use different areas in the 'open season' with little overlap, so the risk of and informed shooter mis-identifying and shooting in error is low. Change of wording of the WCA list is minor.

Benefits

In combination with continuing the voluntary moratorium, this would provide a high level of protection against mortality of GWfG caused by shooting, whilst adding little further constraint to wildfowlers.

Risk Low

Preferred - Option 3

Agenda Item 4.1

SL(5)515 – The Food Information (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Food Information (Wales) Regulations 2014 (S.I. 2014/2303 (W.227)) ("the 2014 Regulations") to enable the enforcement in Wales of Article 26(3) of Regulation (EU) No 1169/2011 as read with Commission Implementing Regulation (EU) 2018/775, with effect from 1 April 2020.

Article 26(3) of Regulation (EU) No 1169/2011 imposes requirements to provide certain information as to the country of origin or place of provenance of the primary ingredient of a food where different to that of the food. Commission Implementing Regulation 2018/775 lays down rules for the application of Article 26(3).

The 2014 Regulations, as amended by these Regulations, enable an improvement notice to be served requiring compliance with Article 26(3) and the provisions of Regulation 2018/775. Failure to comply with the improvement notice is a criminal offence. In addition, enforcing local authorities in Wales have powers of entry and inspection (including seizure of records) under the Food Safety Act 1990, as modified by the 2014 Regulations for these purposes.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations amend the 2014 Regulations to implement, in Wales, provision for enforcement of EU obligations in relation to food labelling. The amended 2014 Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

A government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2020



Cynulliad Cenedlaethol Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales
Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 220 (W. 49)

FOOD, WALES

**The Food Information (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Food Information (Wales) Regulations 2014 (S.I. 2014/2303 (W.227)) (“the 2014 Regulations”). They make provision to implement and enforce in Wales, Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as read with Commission Implementing Regulation (EU) 2018/775 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

Article 26(3) of Regulation (EU) No 1169/2011 imposes requirements to provide certain information as to the country of origin or place of provenance of the primary ingredient of a food where different to that of the food. Commission Implementing Regulation 2018/775 lays down rules for the application of Article 26(3).

Regulation 2 of these Regulations inserts a new Part 5 into Schedule 5 to the 2014 Regulations. This adds Article 26(3) of Regulation (EU) No 1169/2011 as read with Commission Implementing Regulation (EU) 2018/775 to the list of EU provisions to which the enforcement provisions under Regulation 12 of the 2014 Regulations apply.

These provisions, as amended, enable an improvement notice to be served requiring compliance with Article 26(3) and the provisions of Regulation 2018/775. Failure to comply with the improvement notice is a criminal offence. In addition the enforcement authorities have powers of entry and inspection (including seizure of records) for the

purposes of enforcing Article 26(3) as read with the provisions of Regulation 2018/775.

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.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 220 (W. 49)

FOOD, WALES

**The Food Information (Wales)
(Amendment) Regulations 2020**

Made 4 March 2020

*Laid before the National Assembly for
Wales* 6 March 2020

Coming into force 1 April 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e), 17(1) and (2), 26(3) and 48(1) of the Food Safety Act 1990⁽¹⁾ and now vested in them⁽²⁾ and by

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- (1) 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6, the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 10(1) and (3) and Schedule 6, and S.I. 2002/794. Section 16(1) was amended by the 1999 Act, Schedule 5, paragraph 8. Section 17(1) was amended by the 1999 Act, Schedule 5 paragraphs 8 and 12(a) and SI 2011/1043. Section 17(2) was amended by the 1999 Act, Schedule 5 paragraphs 8 and 12(b) and SI 2011/1043. Section 26(3) was partially repealed by the 1999 Act, Schedule 6. Section 48(1) was amended by paragraph 8 of Schedule 5 to the 1999 Act.
- (2) Those functions formerly exercisable by “the Ministers” are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and further transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

paragraph 1A of Schedule 2 to the European Communities Act 1972⁽¹⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers⁽²⁾ and to Commission Implementing Regulation (EU) 2018/775 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food⁽³⁾, inserted into the Food Information (Wales) Regulations 2014⁽⁴⁾, to be construed as references to those Regulations as amended from time to time.

The Welsh Ministers have had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A) of the Food Safety Act 1990⁽⁵⁾.

There has been open and transparent public consultation during the preparation and evaluation of these Regulations as required by Article 9 of

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- (1) 1972 c.68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.
 - (2) OJ No L304, 22.11.2001. p. 18, as last amended by Regulation (EU) 2015/2283, OJ NO L327, 11.12.2015, p. 1)
 - (3) OJ No L 131, 29.05.2018, p. 8.
 - (4) S.I. 2014/2303 (W. 227) as amended by S.I. 2016/664 (W. 181). It is prospectively amended by S.I. 2019/1418 (W. 253) from IP completion day. There are other amending instruments but none is relevant.
 - (5) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999 (c. 28). Those functions conferred on the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and further transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾.

Title and commencement

1.—(1) The title of these Regulations is the Food Information (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 1 April 2020.

Amendment of the Food Information (Wales) Regulations 2014

2.—(1) The Food Information (Wales) Regulations 2014 are amended as follows.

(2) In Schedule 5 (improvement notices – specified provisions), after Part 4 insert—

“PART 5

**FIC Provision in relation to which an
Improvement Notice may be served on
and from 1 April 2020.**

<i>Provision of FIC</i>	<i>Provisions to be read with the provision of FIC</i>
Article 26(3) (mandatory indication of the country of origin or place of provenance of the primary ingredient where different from that of the food.	Articles 1(3) and 6 of FIC, and Commission Implementing Regulation (EU) 2018/775 ⁽²⁾ as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of the food (as amended from time to time).”

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

4 March 2020

⁽¹⁾ OJ No L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243, OJ No L 198, 25.07.2019, p. 241.

⁽²⁾ OJ NO L 131, 29.05.2018, p. 8.

Explanatory Memorandum to The Food Information (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by Food Standards Agency and is laid before the National Assembly for Wales 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 Food Information (Wales) (Amendment) Regulations 2020.

Vaughan Gething
Minister for Health and Social Services
3 March 2020

PART 1

1. Description

1. The Food Information (Wales) (Amendment) Regulations 2020 amend the Food Information (Wales) Regulation 2014 (“the 2014 Regulations”) to enable the enforcement in Wales of the requirements of Article 26 of Regulation (EU) 1169/2011 as read with Implementing Regulation (EU) 2018/775 (“the Implementing Regulation”).
2. The Implementing Regulation sets out the requirements Food Business Operators must follow to ensure compliance with Article 26(3) of the Food Information to Consumers Regulations (FIC).
3. Article 26(3) of the FIC stipulates that where a food’s origin is indicated, and that country of origin or place of provenance is not the same as that of the primary ingredient, the country of origin or the place of provenance of the primary ingredient should be also given and indicated to be different. Article 26(3) applies from the point at which implementing regulations are made under Article 26(8).

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

4. None

3. Legislative background

5. The Food Information (Wales) (Amendment) Regulations 2020 are made in exercise of the Welsh Ministers powers under sections 16(1)(e), 17(1) and (2), 26(3) and 48(1) of the Food Safety Act 1990(1) and by paragraph 1A of Schedule 2 to the European Communities Act 1972. Pursuant to section 48(3) of that Act as read with paragraph 33 of Schedule 11 to the Government of Wales Act 2006 these regulations are subject to annulment in pursuance of a resolution of the National Assembly for Wales.
6. Notwithstanding the UK having left the EU at 11pm on 31st January 2020, FIC continues to apply to the UK during the transition period, pursuant to Part 4 of the Withdrawal Agreement between the UK and the EU, as implemented by sections 1A and 1B of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) (as inserted by the European (Withdrawal Agreement) Act 2020 (“the

2020 Act”). The transition period ends on “IP completion day” (currently 11pm on 31 December 2020 as defined by section 39 of the 2020 Act). At that point the FIC will, so far as it is operative immediately before IP completion day, form part of UK domestic law pursuant to section 3 of the 2018 Act (as amended by the 2020 Act). FIC and the 2014 Regulations will, from IP completion day, be amended by EU Exit SIs in order to correct any deficiencies arising from the withdrawal of the UK from the EU. The provision made by these Regulations will not be affected substantively by any such correction.

4. Purpose and intended effect of the legislation

7. One of the purposes of the FIC is to provide the legislative framework around the provision of information relating to country of origin and place of provenance. Separate but parallel enforcement regulations in respect of the FIC exist in each of the four countries of the UK. In Wales this is the 2014 Regulations.
8. Enforcement of the 2014 Regulations is undertaken by the local authorities. The principle enforcement powers are contained in section 10 (improvement notices) and 32 (powers of entry and investigation) of the Food Safety Act 1990, for which there are associated offences. Regulation 12 of the 2014 Regulations makes provision on the application (with modifications) of the 1990 Act to specified provisions of the 2014 Regulations.
9. Article 26(3) of the FIC provides that where the country of origin or place of provenance of the food is indicated and it differs from that of the primary ingredient, this must be indicated on the food labelling.
10. Currently, Food Business Operators are not required to indicate country of origin or place of provenance unless by virtue of Article 26(2)(a) of the FIC. In accordance with Article 26(2)(a) Food Business Operators must indicate the country of origin or place of provenance of their food in cases where its omission could mislead the consumer as to the true country of origin or place of provenance of the final food in question, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance.
11. These regulations will require that if a Food Business Operator indicates the country of origin or place of provenance of the food and this differs from the country of origin or place of provenance of the primary ingredient of the food, they must also note the country of origin or place of provenance of the primary ingredient. In such cases, the country of origin or place of provenance of the primary ingredient must be indicated in line with the requirements of

Implementing Regulation where the Food Business Operator has indicated a country of origin or place of provenance of the food.

12. The Implementing Regulation provides the format in which the Food Business Operator must provide the information if they have indicated the country of origin or place of provenance of the food and the country of origin or place of provenance differs from the primary ingredient of the food.
13. The Food Information (Wales) (Amendment) Regulations 2020 amend the 2014 Regulations to enable the requirements of Article 26(3) of Regulation (EU) 1169/2011 and Implementing Regulation 2018 to be captured within the existing enforcement regime of the 2014 Regulations.
14. The intended effect of Article 26(3) is to enable consumers to make more informed choices in Wales and to ensure the information with which they are provided is precise and meaningful. These Regulations will provide for enforcement of that Article.
15. The Implementing Regulation is a directly applicable EU Regulation with no national measures.
16. Implementing Regulation 2018 does not apply to geographical indications protected under Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013, Regulation (EC) No 110/2008 or Regulation (EU) No 251/2014 or protected pursuant to international agreements, nor registered trade marks where the latter constitute an origin indication, pending the adoption of specific rules concerning the application of Article 26(3) to such indications.
17. The method of enforcement used in the Food Information (Wales) (Amendment) Regulations 2020 will be via an improvement notice. If a Food Business Operator fails to comply with the conditions set by an improvement notice the non-compliance with those conditions will be a criminal offence.
18. Similar legislation is being made in England, Scotland and Northern Ireland.

Consultation

19. A four-week consultation ran from 22 January 2020 to 19 February 2020 on the proposal to draft domestic legislation to provide for the enforcement of Article 26(3) of the FIC as read with the Implementing Regulation in Wales. The consultation was drawn to the attention of a wide audience of key stakeholders per email including food business operators, local authorities, universities, and the National Farmers Union Cymru.

20. Five responses were received for the consultation, none of which opposed the plan to draft domestic legislation enforcing Article 26(3) of FI(C) as read with the Implementing Regulation or highlighted any issues for which it was deemed necessary to undertake an impact assessment.

21. A summary of the consultation responses will be published on the Food Standards Agency's website within three months of the Regulations being laid.

Regulatory Impact Assessment (RIA)

22. The Welsh Government's Code of Practice on Impact Assessments states that an Impact Assessment should normally be published alongside a formal consultation.

23. The FSA considers the impact on both businesses and enforcement authorities of the proposed Regulations will be negligible. This is largely as the changes result from the overarching principles of EU Regulation 1169/2011, to which the UK has already aligned, as well as the directly applicable Implementing Regulation 2018/775.

24. The Food Information (Wales) (Amendment) Regulations 2020 only provide specific enforcement powers, which already exist for non-compliance with related requirements.

25. The FSA envisages minimal one-off familiarisation costs for Local Authorities in Wales to read and familiarise themselves with the EU Regulations and then disseminate to enforcement officers. A guidance document is being provided by the FSA to Local Authorities explaining the new requirements upon making of the Statutory Instrument.

26. It was noted in the consultation that an impact assessment would not be conducted, but that if responses would bring to light any impact on enforcement bodies or industry which has not been anticipated, the need for an Impact Assessment would be reconsidered. No responses from the consultation were deemed to require the need for an impact assessment.

27. As such, an impact assessment will not be produced.

28. The Food Information (Wales) (Amendment) Regulations have no impact on the statutory duties or statutory partners of the Government of Wales Act 2006.

SL(5)519 – The Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007 ("the 2007 Regulations") to correct an omission in the enforcement provision.

The 2007 Regulations provide for the enforcement of EU law in relation to adding vitamins, minerals and certain other substances to food. The EU Regulation provides for substances that could represent a potential risk to consumers, which may be prohibited, restricted or kept under scrutiny. When made, the 2007 Regulations did not provide for the enforcement of prohibiting or restricting substances being added to foods. This is because there were no prohibited or restricted substances at that time. However, since 2007 Ephedra herb and Yohimbe bark have been listed as prohibited substances and trans fats have been listed as restricted substances. These Regulations therefore add prohibited and restricted substances to the enforcement regime.

These Regulations are made under sections 16(1)(a) and (f), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990 and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Procedure

Negative.

Technical Scrutiny

No technical points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No merits points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations amend the 2007 Regulations which provide for, in Wales, the enforcement of EU obligations on the addition of vitamins and minerals and certain other substances to food. The amended 2007 Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

A government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee
17 March 2020



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 257 (W. 59)

FOOD, WALES

**The Addition of Vitamins, Minerals
and Other Substances (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007 (S.I. 2007/1984 (W. 165)) (“the 2007 Regulations”).

Regulation 2(1) of the 2007 Regulations is amended so that the definition of “the EC Regulation” includes a reference to Annex 3 (as it may be amended from time to time) of Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (OJ No. L 404, 30.12.2006, p. 26), as last amended by Commission Regulation (EU) 2019/650 of 24 April 2019 amending Annex 3 to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards Yohimbe (*Pausinystalia yohimbe* (K. Schum) Pierre ex Beille) (OJ No. L 110, 25.4.2019, p. 21).

Regulation 4(2) of the 2007 Regulations is amended so that it is an offence to add a substance listed in Annex 3, Part A of the EC Regulation to foods, or to use such a substance in the manufacture of foods.

Regulation 4(2) of the 2007 Regulations is further amended so that it is an offence to add a substance listed in Annex 3, Part B to the EC Regulation to foods, or to use such a substance in the manufacture of foods unless that substance is added or used in accordance with the conditions specified in that Part.

A new transitional provision (regulation 4A) is inserted into the 2007 Regulations to provide that no offence is committed in respect of any food that does not comply with the provisions of Annex 3, Part B relating to trans fat other than trans fat naturally

occurring in fat of animal origin and which is placed on the market before 1 April 2021.

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.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 257 (W. 59)

FOOD, WALES

**The Addition of Vitamins, Minerals
and Other Substances (Wales)
(Amendment) Regulations 2020**

Made *10 March 2020*

*Laid before the National Assembly for
Wales* *12 March 2020*

Coming into force *3 April 2020*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a) and (f), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾ and now vested in them⁽²⁾ and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽³⁾.

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- (1) 1990 c. 16. Section 1(1) and (2) (meaning of “food” and other basic expressions) was substituted by S.I. 2004/2990. Section 16(1) of the Food Safety Act 1990 (“the 1990 Act”) was amended by paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 17 of the 1990 Act was amended by paragraphs 7, 8, and 12 of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 48(1) was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act.
- (2) Those functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales) so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). Those functions are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act.
- (3) 1972 c. 68 (“the 1972 Act”). Section 2(2) of the 1972 Act was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food⁽¹⁾. These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Welsh Ministers that it is expedient for certain references to provisions of Regulation (EC) No 2016/128⁽²⁾ to be construed as references to those provisions as amended from time to time.

The Welsh Ministers have had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A) of the Food Safety Act 1990⁽³⁾.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽⁴⁾, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 3 April 2020.

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| <p>(1)</p> <p>(2)</p> <p>(3)</p> <p>(4)</p> | <p>Reform Act 2006. It was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 and S.I. 2007/1388.</p> <p>S.I. 2005/1971 to which there are amendments not relevant to these Regulations.</p> <p>Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (OJ No. L 404, 30.12.2006, p. 26), as last amended by Commission Regulation (EU) 2019/650 of 24 April 2019 amending Annex 3 to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards Yohimbe (<i>Pausinystalia yohimbe</i> (K. Schum) Pierre ex Beille) (OJ No. L 110, 25.4.2019, p. 21).</p> <p>Section 48(A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.</p> <p>OJ No. L 31, 1.2.2002, p.1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (OJ No. L 198, 25.7.2019, p. 241) and prospectively amended by S.I. 2019/641.</p> |
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Amendment of the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007

2.—(1) The Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007⁽¹⁾ are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “the EC Regulation” (“*y Rheoliad CE*”) for “I or II” substitute “1, 2 or 3”.

(3) In regulation 4(2) (offences and penalties)—

- (a) at the end of sub-paragraph (d) omit “and”;
- (b) at the end of sub-paragraph (e) for “.” substitute “;”;

(c) after sub-paragraph (e) insert—

“(f) Article 8(2)(a)(i) (prohibition of the addition of a substance listed in Annex 3, Part A to foods or its use in the manufacture of foods);

(g) Article 8(2)(a)(ii) (prohibition of the addition of a substance listed in Annex 3, Part B to foods or its use in the manufacture of foods unless that substance is added or used in accordance with the conditions specified in that Part).”

(4) After regulation 4 insert—

“Transitional provision in relation to food containing substance listed in Annex 3, Part B

4A. An offence is not committed under paragraph (1) of regulation 4 by virtue of paragraph (2)(g) of that regulation in respect of the addition of a substance to, or its use in the manufacture of, any food if—

- (a) the food is placed on the market before 1 April 2021; and
- (b) the substance concerned falls within the entry in Annex 3, Part B relating to trans fat other than trans fat naturally occurring in fat of animal origin.”

Vaughan Gething

Minister for Health and Social Services, one of the Welsh Ministers

10 March 2020

⁽¹⁾ S.I. 2007/1984 (W. 165), amended by S.I. 2014/2303 (W. 227) and S.I. 2018/806 (W. 162). It is prospectively amended by S.I. 2019/179 (W. 45).

Explanatory Memorandum to the Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales 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 Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2020**. I am satisfied that the benefits justify the likely costs.

Vaughan Gething
Minister for Health and Social Services
12 March 2020

1. Description

The Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2020 (these Regulations) will amend The Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007 (The 2007 Regulations) to correct an omission in the enforcement provision.

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

None.

3. Legislative background

Welsh Ministers have the powers to make the proposed Regulations under sections 16(1)(a) and (f), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990 (“the 1990 Act”) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Powers under the 1990 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, as read with Section 40(3) of the Food Standards Act 1999, and were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (“GOWA 2006”). Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink), including the primary production of food by way of the European Communities (Designation) (No 2) Order 2005 (S.I. 2005/1971).

These Regulations are being made under the negative procedure.

4. Purpose & intended effect of the legislation

The 2007 Regulations provide for the enforcement of Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to foods “the EC Regulation”.

Article 8 and Annex III of the EC Regulation provide for substances that could represent a potential risk to consumers. Such substances may be:

- Prohibited under Part A of Annex III
- Restricted with certain conditions of use under Part B of Annex III
- Kept under scrutiny subject to evidence of safety under Part C of Annex III.

At the time the 2007 Regulations were made, there were no prohibited or restricted substances. Consequently Article 8 and Annex III provisions were not included in the offences and penalties section of the 2007 Regulations.

Since then, two substances, Ephedra herb and Yohimbe bark, have been prohibited under part A; and trans fats have been restricted under part B.

These Regulations will amend the 2007 Regulations to include a provision for Article 8 on the prohibition or restriction of substances listed in Part A or B of Annex III. This will make it a punishable offence if a food business operator adds a substance listed in Annex 3, Part A of the EC Regulation to foods or uses such a substance in the manufacture of foods. The amendments to the regulations will also make it a punishable offence to add a substance listed in Annex 3, Part B of the EC Regulation to foods, or to use the substance in the manufacture of foods, unless that substance is added or used in accordance with the conditions specified in that Part.

These Regulations will also include a transitional provision to provide that no offence is committed in respect of any food that does not comply with the provisions of Annex 3, Part B relating to trans fat other than trans fat naturally occurring in fat of animal origin and which is placed on the market before 1 April 2021.

Enforcement

The EC Regulation came into force on 19 January 2007 and entered into application from 1 July 2007. From 1 July 2007, the EC Regulation became directly applicable in all member states, including the UK, and the provision of the EC Regulation will continue to apply after exit day.

The 2007 Regulations put in place offences linked to the EC Regulation and enforcement provisions and penalties associated with those offences to enable enforcement of the EC Regulation in Wales, but failed to include provision for Article 8 and Annex III of the EC Regulation. These Regulations will correct this and will extend the current enforcement regime to include the Article 8 and Annex III Part A and Part B provisions. The current enforcement regime is as follows:

“any person who contravenes or fails to comply with the provisions of the EC Regulation specified in paragraph (2) is guilty of an offence and liable —
(a) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
(b) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum or both.”

5. Consultation

A limited technical consultation was held for four weeks from 25 November 2019. A limited consultation was considered appropriate in this case given it focussed purely on extending the existing enforcement regime introduced by the 2007 Regulations to include provision for Article 8 and Annex III of the EC Regulations and which had already been subject to a full 12-month consultation.

The consultation was shared with enforcement bodies, industry stakeholders, health professional and consumer groups and other relevant non-government organisations.

Two response were received to the consultation, both from members of the public and both fully supportive of the proposed Regulations. Consultations were also held in the other UK countries.

No amendments were made to these or the other equivalent UK Regulations as a consequence of the consultations.

6. Regulatory Impact Assessment (RIA)

A full regulatory impact assessment has not been carried out for these Regulations as the impact on businesses, charities or voluntary bodies is expected to be small.

Two options have been considered:

Option 1: Do nothing – The 2007 Regulations will not be amended to include a provision for Article 8 on the prohibition or restriction of substances listed in Part A or B of Annex III. It will therefore not be a punishable offence if a food business operator uses a prohibited substance listed in Part A or is non-compliant with the conditions of use for substances listed in Part B.

Existing legislation such as, for example, the Food Safety Act 1990 or the Fraud Act 2006, would provide enforcement powers in the most severe cases breaching food safety.

This could result in several unwanted impacts including:

- lack of legal clarity for enforcement officers and businesses;
- risk to vulnerable consumers if there are no sanctions for non-compliant products and such products therefore remain on the market;
- impact on the supply chain of these specialist products due to uncertainty of business;
- lack of consumer confidence in enforcement of the law;
- the UK would be in breach of its legal obligations under the EU Treaty as applied by the Withdrawal Agreement and may face infraction proceedings.

Option 2: Introduce the Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2020 to include a provision for Article 8 on the prohibition or restriction of substances listed in Part A or B of Annex III and, make it a punishable offence if a food business operator uses a prohibited substance listed in Part A or is non-compliant with the conditions of use for substances listed in Part B.

Option 2 is the preferred approach.

Costs and Benefits

Costs to business

This legislation affects manufacturers who add nutrients to food including, but not limited to vitamins and minerals.

We are not aware of any manufacturers in the UK who use either of the two prohibited substances, Ephedra herb and Yohimbe bark, in the manufacture of food.

Those who use trans fats have been restricted under part B and will have until 1 April 2021 to remove such products from the market. We are not aware of any such business operating in the UK.

We estimate that businesses will only need to spend a short amount of time familiarising themselves with the new requirements.

Costs to local authorities

The impact on the public sector of implementing Option 2 is small. Local authorities would need to set aside time to become familiar with these Regulations, however ongoing workloads for Trading Standards Officers are not expected to increase as a result of these Regulations.

It is estimated that it would take one Trading Standards Officer one hour to read and become familiar with these Regulations and the new enforcement regime. The hourly pay rate for qualified Trading Standards Officers is between £16 and £25 – averaging approximately £27 per hour once uprated to account for non-wage labour costs and overheads, taken as 30%. The total one-off cost to the 22 local authorities in Wales is therefore estimated at £594.

Benefits to business

These Regulations will provide clarity for business in terms of the offences and penalties they will face if they do not comply with the requirements for substances provided for under Article 8 and Annex III.

Benefits to local authorities

These Regulations will provide clarity for enforcement officers in terms of the enforcement tools available to them if a business does not comply with the requirements for substances provided for under Article 8 and Annex III.

Benefits to consumers

The extension of the enforcement provision in these Regulations will provide consumers with further protection and assurance in this area.

Summary of the preferred option

Option 2 is the preferred option because it ensures full enforcement of the EC Regulation in Wales and avoids the associated risk of infraction proceedings and consequent fines.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/EM/0587/19

Helen Mary Jones AM
Chair
Culture, Welsh Language and Communications Committee
Tŷ Hywel
Cardiff Bay
Cardiff
CF99 1NA

16 March 2020

Dear Helen,

Following my written statement to Members today, I am pleased to enclose a copy of The Welsh Language Standards (No.8) Regulations which have been published for consultation.

These Regulations seek to set out Welsh Language Standards for the following nine bodies:

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- General Pharmaceutical Council
- Health and Care Professions Council
- Nursing and Midwifery Council
- Professional Standards Authority for Health and Social care

This consultation has been scheduled for some time and I have decided to go ahead with it as planned. However I am very aware that all stakeholders are under considerable strain and are facing a period of uncertainty due to the current Coronavirus situation, none more so than health sector bodies. We will therefore review the closing date in due course to ensure that all stakeholders have a fair opportunity to give the consultation their full consideration.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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CF99 1NA

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Over the past months we have been undertaking a review of Welsh Language Standards. The aim of the review was to carefully consider how best to adapt the Standards within the legislative framework of the Welsh Language Measure in accordance with the Committee's recommendations following the inquiry '*Supporting and promoting the Welsh Language*'.

I'm pleased that officials have already offered a technical briefing to the Committee to discuss the findings of the review and to set these Regulations in the context of the work the Committee has been taking forward.

For information, I am also sending a copy of this letter to Dai Lloyd, Chair of the Health, Social Care and Sport Committee and Mick Antoniw, Chair of the Legislation, Justice and Constitution Committee as both Committees have expressed an interest in the progress of Welsh Language Standards.

Before I conclude, it would be remiss not to place on record my thanks to the Committee for their efforts and recommendations that have supported us in getting this far. I look forward to reviewing the outcomes of the consultation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AC/AM

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol
Minister for International Relations and the Welsh Language

Draft Regulations laid before the National Assembly for Wales under section 150(2) of the Welsh Language (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

20[xx] No. (W.)

WELSH LANGUAGE

**The Welsh Language Standards
(No. 8) Regulations 20[xx]**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Welsh Language (Wales) Measure 2011 (nawm 1) (“the 2011 Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993 (c. 38).

Section 26 of the 2011 Measure enables the Welsh Ministers to specify standards, and section 39 enables them to provide that a standard is specifically applicable to a person by authorising the Welsh Language Commissioner (“the Commissioner”) to give a notice to that person requiring compliance with the standard (a “compliance notice”).

These Regulations specify standards in relation to the conduct of the bodies listed in Schedule 6 to the Regulations. The listed bodies are:

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- General Pharmaceutical Council
- Health and Care Professions Council
- Nursing and Midwifery Council
- Professional Standards Authority for Health and Social Care

Amongst other things, these bodies (apart from the Professional Standards Authority for Health and Social Care) may make decisions in respect of legal

proceedings brought before them. The Welsh Language Act 1993 makes provision about speaking Welsh in legal proceedings in Wales.

The Regulations also authorise (subject to certain exceptions set out in regulation 3(2)) the Commissioner to give a compliance notice to those bodies, in relation to standards specified by the Regulations.

In accordance with section 44 of the 2011 Measure, the Commissioner may (by way of a compliance notice) require a body to comply with one or more standards that are specifically applicable to it. To reflect that, the standards specified by the Regulations are expressed in the second person narrative, meaning that they are in “you must” form (where “you” means the relevant body in each case).

Using the flexibility provided by section 44 of the 2011 Measure the Commissioner may (if it is reasonable and proportionate, and the Commissioner wishes to do so) require a body to comply with one standard in some circumstances and another standard in other circumstances. For example, if a standard is specifically applicable to a body the Commissioner may require the body to comply with the standard in some circumstances but not others, or require it to comply with the standard only in some areas. Similarly if two or more standards relate to a specific conduct (for example, standards 8 to 11 in relation to answering telephone calls), the Commissioner may (by way of a compliance notice) require a body to comply with one of those standards only, or with different standards at different times, in different circumstances, or in different areas; as is appropriate for the body. The Commissioner is not, therefore, obliged to require every body to comply with every standard.

In accordance with section 46 of the 2011 Measure, the compliance notice given to a body must state the imposition day, or imposition days; meaning the day or days upon which the body becomes required to comply with a standard (or comply with a standard in a specific way). Using the flexibility provided for by section 46, the Commissioner may set an early imposition day for a body to comply with a standard (provided this is at least 6 months after the date on which the body was given the related compliance notice), or set an imposition day further in the future (for example in relation to more challenging standards).

Where a standard specified in these Regulations requires written material to be displayed or provided in Welsh, or for a service to be provided in Welsh, this does not mean that the material must be displayed or provided in Welsh only, or that the service must

only be provided in Welsh (unless that is specifically stated).

Schedule 1 to the Regulations specifies **service delivery standards**. Section 28 of the 2011 Measure provides that a “service delivery standard” means a standard that relates to a service delivery activity, and is intended to promote or facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language when that activity is carried out. A “service delivery activity” means a person delivering services to another person, or dealing with any other person in connection with delivering services to that other person, or to a third person.

Schedule 2 to the Regulations specifies **policy making standards**. Section 29 of the 2011 Measure provides that a “policy making standard” means a standard that relates to a policy decision, and is intended to secure, or to contribute to securing, that the person making the policy decision considers one or more of the following—

- (a) what effects, if any, (whether positive or adverse) the policy decision would have on opportunities for people to use the Welsh language, or on treating the Welsh language no less favourably than the English language;
- (b) how the decision could be made so that the decision has positive effects, or increased positive effects, on opportunities for people to use the Welsh language, or on treating the Welsh language no less favourably than the English language;
- (c) how the decision could be made so that the decision does not have adverse effects, or has decreased adverse effects, on opportunities for other persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.

Schedule 3 to the Regulations specifies **operational standards**. Section 30 of the 2011 Measure provides that an “operational standard” means a standard that relates to the functions, or a business or other undertaking (“relevant activities”) of a person (“A”), that is intended to promote or facilitate the use of the Welsh language—

- (a) by A in carrying out A’s relevant activities,
- (b) by A and another person in dealings between them in connection with A’s relevant activities, or
- (c) by a person other than A in carrying out activities for the purposes of, or in connection with, A’s relevant activities.

Schedule 4 to the Regulations specifies **record keeping standards**. Section 32 of the 2011 Measure provides that a “record keeping standard” is a standard relating to the keeping of records about other specified standards, records about complaints concerning compliance with other specified standards, or records about other complaints concerning the Welsh language.

Schedule 5 to the Regulations specifies **standards that deal with supplementary matters**. These are specific forms of service delivery standards, policy making standards, operational standards and record keeping standards that deal with the matters referred to in section 27(4) of the 2011 Measure (which are supplementary to the matters dealt with in Schedules 1 to 4).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Language Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 150(2) of the Welsh Language (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

20[xx] No. (W.)

WELSH LANGUAGE

**The Welsh Language Standards
(No. 8) Regulations 20[xx]**

Made

Coming into force

The Welsh Ministers, in exercise of the powers conferred upon them by sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011(1), having received the approval of the National Assembly for Wales in accordance with section 150(2) of that Measure, make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Welsh Language Standards (No. 8) Regulations 20[xx].

(2) These Regulations come into force on [].

(3) These Regulations apply in relation to Wales.

(4) In these Regulations—

a “body” (“*corff*”) means a person listed in Schedule 6;

an “individual” (“*unigolyn*”) means a natural person ordinarily resident in Wales acting in their personal capacity but, does not include a registrant acting in their capacity as a registrant.

a “member of staff” (“*aelod o staff*”) means an employee of a body or a natural person working for a body but not a person appointed to a body by the Privy Council (and “staff” (“*staff*”) must be construed accordingly);

(1) 2011 nawm 1.

“registered” (“*wedi ei gofrestru*”) means registered in a register that the body maintains by virtue of any enactment;

a “registrant” (“*un sydd wedi cofrestru*”) means a person ordinarily resident in Wales registered with a body or applying to be registered with a body.

(5) In these Regulations—

- (a) references to any activity being carried out by a body, or to any service being provided by a body, are to be read as including a reference to that activity being carried out on the body’s behalf or to that service being provided on the body’s behalf by a third party under arrangements made between the third party and the body;
- (b) accordingly, unless a compliance notice provides to the contrary, a body will have failed to comply with a standard in respect of an activity or service it has arranged to be carried out or provided by a third party if that activity or service has not been carried out or provided in accordance with the standard.

(6) Nothing in these Regulations requires a body to comply with a standard in respect of an activity carried out by it or a service provided by it where it is carrying out that activity or providing that service on behalf of a third party under arrangements made between it and the third party.

Standards specified

2.—(1) In Schedule 1—

- (a) Part 1 specifies service delivery standards;
- (b) Part 2 provides that a compliance notice must require a body to comply with certain standards specified in Part 1 if it has required the body to comply with certain other standards;
- (c) Part 3 defines a number of words and expressions.

(2) In Schedule 2—

- (a) Part 1 specifies policy making standards;
- (b) Part 2 defines a number of words and expressions.

(3) In Schedule 3—

- (a) Part 1 specifies operational standards;
- (b) Part 2 provides that a compliance notice must require a body to comply with certain standards specified in Part 1 if it has required the body to comply with certain other standards;

- (c) Part 3 defines a number of words and expressions.
- (4) In Schedule 4—
 - (a) Part 1 specifies record keeping standards;
 - (b) Part 2 defines a number of words and expressions.
- (5) In Schedule 5—
 - (a) Part 1 specifies standards that deal with matters which are supplementary to the matters dealt with in the standards specified in Schedules 1 to 4;
 - (b) Part 2 makes provision about interpreting the supplementary standards.

Standards that are specifically applicable

3.—(1) The Welsh Ministers authorise the Welsh Language Commissioner to give a compliance notice to the persons listed in Schedule 6 requiring them to comply with any of the standards specified under regulation 2 and Schedules 1 to 5.

(2) But the Commissioner is not authorised to give a compliance notice to the Professional Standards Authority for Health and Social Care requiring them to comply with standards 23 to 26.

Name

Minister for International Relations and the Welsh Language, one of the Welsh Ministers

Date

SCHEDULE 1 Regulation 2(1)
Service delivery Standards

PART 1
THE STANDARDS

**1 Standards relating to
correspondence sent by a body**

***(1) When a body replies to
correspondence***

Standard 1: If you receive correspondence from a person in Wales in Welsh you must reply in Welsh (if an answer is required), unless the person has indicated that there is no need to reply in Welsh.

***(2) When a body initiates
correspondence with several
individuals***

Standard 2: When you send the same correspondence to several individuals, you must send a Welsh language version of the correspondence to the individuals at the same time as you send any English language version.

***(3) General standards relating to
correspondence***

Standard 3: If you produce a Welsh language version and a corresponding English language version of correspondence, you must not treat the Welsh language version less favourably than the English language version (for example, if the English version is signed, or if contact details are provided on the English version, then the Welsh version must be treated in the same way).

Standard 4: You must state—
(a) in correspondence, and
(b) in publications and

notices that invite persons in Wales to respond to you or to correspond with you,

that you welcome receiving correspondence in Welsh, that you will respond to correspondence in Welsh, and that corresponding in Welsh will not lead to delay.

2 Standards relating to telephone calls made and received by a body

Standard 5: When an individual contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, and that individual requests that you deal with the call in Welsh, you must deal with the call in Welsh if a Welsh speaking member of staff is available (by transferring the call if necessary), until such point as—

(a) the Welsh speaking member of staff cannot provide a service on a specific subject matter; and

(b) no Welsh speaking member of staff is available to provide a service on that specific subject matter.

Standard 6: Any automated telephone systems that you have must provide the complete automated service in Welsh.

Standard 7: When you advertise an automated telephone service number you must not treat the Welsh language less favourably than the English language.

3 Standards relating to a body holding meetings that are not open to the general public

(1) Meetings between a body and one other invited person

Standard 8: If you invite one individual only (“A”) to a meeting (and no other

persons)—

- (a) you must ask A whether A wishes to use the Welsh language at the meeting, and inform A that you will conduct the meeting in Welsh or if necessary, provide a translation service from Welsh to English for that purpose, and
- (b) if A has informed you that A wishes to use the Welsh language at the meeting, you must conduct the meeting in Welsh or, if necessary, arrange for a simultaneous or consecutive translation service from Welsh to English to be available at the meeting.

(2) Meetings between a body and more than one invited person

Standard 9: If you invite more than one person to a meeting in Wales, you must ask each individual invited whether they wish to use the Welsh language at the meeting.

Standard 9A: If you have invited more than one person to a meeting in Wales, and at least 10% of the individuals invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting.

Standard 9B: If you have invited more than one person to a meeting in Wales, and at least 20% of the individuals invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting.

Standard 9C: If you have invited more than one person to a meeting in Wales, and

at least 30% of the individuals invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting.

4

Standards relating to meetings arranged by a body that are open to the public

Standard 10:

If you arrange a meeting held in Wales that is open to the public and at which public participation by an individual is allowed you must state on any material advertising it, and on any invitation to it, that anyone attending is welcome to use the Welsh language at the meeting.

Standard 11:

When you send invitations to a meeting held in Wales that you arrange which is open to the public and at which public participation by an individual is allowed, you must send the invitations in Welsh.

Standard 12:

If you invite persons to speak at a meeting in Wales that you arrange which is open to the public and at which public participation by an individual is allowed you must—

- (a) ask each person invited to speak whether he or she wishes to use the Welsh language, and
- (b) if that person (or at least one of those persons) has informed you that he or she wishes to use the Welsh language at the meeting, provide a simultaneous or consecutive translation service from Welsh to English for that purpose (unless you conduct the meeting in Welsh without a translation service).

5

Standards relating to public events organised or funded by a body

Standard 13: If you organise a public event in Wales you must ensure that, in promoting the event, the Welsh language is treated no less favourably than the English language (for example, in the way the event is advertised or publicised).

Standard 14: If you organise a public event in Wales you must ensure that the Welsh language is treated no less favourably than the English language at the event (for example, in relation to services offered to persons attending the event, in relation to signs you produce and display at the event and in relation to audio announcements made at the event).

6 Standard relating to a body's publicity and advertising

Standard 15: Any publicity or advertising material that you produce for an individual must be produced in Welsh and if you produce the material in Welsh and English, you must not treat the Welsh language version less favourably than you treat the English language version.

7 Standards relating to a body displaying material in public

Standard 16: Any material that you produce and display in public in Wales must be displayed in Welsh, and you must not treat any Welsh language version of the material less favourably than the English language version.

Standard 17: Any material that you produce and display at a public exhibition in Wales organised by you must be displayed in Welsh, and you must not treat any Welsh language version of the material less favourably than you treat an English language version.

8 Standards relating to a body producing and publishing

documents and forms

- Standard 18:** If you produce a form that is to be completed by an individual, you must produce it in Welsh.
- Standard 19:** If you produce an application form that you make available for a registrant to be included on the register maintained by you, you must produce it in Welsh.
- Standard 20:** If you produce a document (but not a form) which is available to one or more individuals, you must produce it in Welsh—
- (a) if the subject matter of the document suggests that it should be produced in Welsh, or
 - (b) if the anticipated audience in Wales, and their expectations, suggests that the document should be produced in Welsh.
- Standard 21:** If you produce a document or a form in Welsh and in English you must—
- (a) not treat any Welsh language version less favourably than you treat the English language version (whether separate versions or not);
 - (b) not differentiate between the Welsh and English version in relation to any requirements that are relevant to the document or form (for example in relation to any deadline for submitting the form, or in relation to the time allowed to respond to the content of the document or form); and
 - (c) ensure that the English language version clearly states that the document or form is also available in Welsh.

- Standard 22:** You must state in publications, guidance and notices that you produce informing persons about legal proceedings that they may submit forms and documents and make written representations to you in Welsh.
- Standard 23:** Where a registrant contacts you to respond to legal proceedings, you must ask the registrant to indicate whether the registrant wishes to speak in Welsh in any legal proceedings⁽¹⁾.
- Standard 23A:** If a registrant (“R”) has informed you that R wishes to use the Welsh language in any legal proceedings held in England, you must conduct the legal proceedings in Welsh or, if necessary, arrange for a simultaneous or consecutive translation service from Welsh to English to be available at the meeting.
- Standard 24:** Where a registrant (“R”) contacts you for the first time to respond to legal proceedings, you must ask R to indicate whether R wishes to receive copies in Welsh of forms and documents that you produce and which are to be available to R (including, for example, written determinations or orders in relation to those legal proceedings).
- Standard 24A:** Where a registrant (“R”) contacts you to respond to legal proceedings, and R indicates that they wish to receive copies in Welsh of forms and documents that you produce and which are to be made available to R, you—
- (a) must provide such forms and documents in Welsh in relation to those legal proceedings, and
 - (b) must not treat the production of them less favourably than forms and

(1) Section 22 of the Welsh Language Act 1993 (c. 38) makes provision about speaking Welsh in legal proceedings in Wales.

documents you produce in English.

Standard 25: Where you receive forms or documents in Welsh from a registrant (“R”) responding to legal proceedings, you must not treat those forms or documents less favourably than ones that you receive in English (including amongst other matters, in relation to the timescale for receiving such forms and documents and informing R of decisions).

10 Standards relating to a body’s websites and on-line services

Standard 26: You must designate and maintain a page (or pages) on your website which provides information (in Welsh) on—

- (a) you,
- (b) the services you provide generally,
- (c) the services you provide in Wales,
- (ch) how to make a complaint about a person regulated by you,
- (d) the Welsh language services you provide and how each of those Welsh language services can be accessed.

Standard 27: If you have a Welsh language web page that corresponds to an English language web page, you must state clearly on the English language web page that the page is also available in Welsh, and you must provide a direct link to the Welsh page on the corresponding English page.

11 Standards relating to a body’s use of social media

Standard 28: If a person contacts you by social media in Welsh, you must reply in Welsh (if an answer is required).

12 Standards relating to official

notices made by a body

Standard 29: Any official notice that you publish or display in Wales and which relates to a service provided in Wales must be published or displayed in Welsh, and you must not treat any Welsh language version of a notice less favourably than an English language version.

Standard 30: When you publish or display an official notice in Wales that contains Welsh language text as well as English language text, the Welsh language text must be positioned so that it is likely to be read first.

13 Standards for raising awareness about Welsh language services provided by a body

Standard 31: You must promote any Welsh language service that you provide, and advertise that service in Welsh.

Standard 32: If you provide a service in Welsh that corresponds to a service you provide in English, any publicity or document that you produce, or website that you publish, which refers to the English service must also state that a corresponding service is available in Welsh.

14 Standard relating to a body's corporate identity

Standard 33: When you form, revise or present your corporate identity, you must not treat the Welsh language less favourably than the English language.

PART 2

STANDARDS THAT ARE RELIANT ON OTHER STANDARDS – SPECIAL CONDITIONS

15 When a compliance notice requires a body to comply with one of the standards listed on a specific row

in column 1 of Table 1, that compliance notice must also require that body to comply (in whatever way the Welsh Language Commissioner considers appropriate) with the standard or standards listed in column 2 of that row (or with one or more of those standards where that is stated).

TABLE 1

<i>Row</i>	Column 1 <i>Main standard</i>	Column 2 <i>Reliant standard</i>
(1)	Replying to correspondence Standard 1	Standard 4
(2)	Corresponding with several persons Standard 2	Standard 3 Standard 4
(3)	Raising awareness about corresponding in Welsh Standard 4	Standard 1
(4)	Meetings with more than one person Standard 9	One or more of the following: Standard 9A Standard 9B Standard 9C
(5)	Meetings with more than one person Standard 9A, 9B or 9C	Standard 9
(6)	Documents Standard 18, 19, or 20	Standard 21
(7)	Legal proceedings	

	Standard 23	Standard 23A
(8)	Legal proceedings Standard 23A	Standard 23
(9)	Legal proceedings Standard 24	Standard 24A
(10)	Legal proceedings Standard 24A	Standard 24

PART 3

INTERPRETING THE STANDARDS

- 16** The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 17** The standards only apply to the extent that a body—
- (a) delivers services to a person, or
 - (b) deals with any other person in connection with delivering services—
 - (i) to that other person, or
 - (ii) to a third person.
- 18** A body is not required to produce, to display or to send material in Welsh to the extent that another enactment has specified the wording of a document, a sign or a form which would run contrary to that requirement.
- 19** For the purposes of the standards—
- (a) a requirement to produce, to send, to publish, to display, to make available or to issue any written material in Welsh does not mean that the material should be produced, sent, published, displayed, made available or issued in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is

specifically stated in the standard);

- (b) a requirement to provide a service in Welsh does not mean that that service should only be provided in Welsh (unless that is specifically stated in the standard).

20

(1) A body is not required to translate into Welsh any text that it has not produced (“text A”).

(2) A body will not be treating the Welsh language less favourably if it does not translate text A into Welsh but see sub-paragraph (3).

(3) A body must use the Welsh version of text A if another person has produced text A in Welsh in accordance with—

- (a) its Welsh Language Scheme;
- (b) a duty to comply with standards;
- (c) Standing Orders of the Assembly;
- (ch) section 35(1C) of the 2006 Act; or
- (d) the Assembly Commission’s Official Languages Scheme.

(4) In this paragraph—

- (a) “Welsh Language Scheme” means a Welsh language scheme produced in accordance with Part 2 of the Welsh Language Act 1993⁽¹⁾;
- (b) “a duty to comply with standards” means a duty to comply with a standard under section 25 of the Welsh Language (Wales) Measure 2011;
- (c) “the 2006 Act” means the Government of Wales Act 2006⁽²⁾;

(1) 1993 c. 38.

(2) 2006 c. 32.

- (ch) “Standing Orders of the Assembly” means standing orders made under section 31 of the 2006 Act;
- (d) “the Assembly Commission’s Official Languages Scheme” means the Scheme adopted and published under paragraph 8 of Schedule 2 to the 2006 Act.

21 For the purpose of standards 2, 15, 18, 19 and 20, a reference to—

- (a) publicity or advertising material being produced for an individual,
- (b) a form or document being available to registrants or individuals,
- (c) a form to be completed by an individual, or
- (ch) correspondence being sent to individuals,

means publicity or advertising material, documents, forms or correspondence whether or not it is also produced for, available to, to be completed by or sent to persons outside Wales.

22 In standard 6 an “automated” telephone system means a system that answers telephone calls and guides persons through a set procedure with a recorded message which, for example, asks a person to press different keys in order to choose different options.

23 For the purposes of the standards, “meetings” do not include legal proceedings.

24 Standard 14 does not apply when the message that you announce over a public address system is made during an emergency or an emergency drill.

25 Standard 16 does not apply to material displayed on a body’s website.

26

(1) Subject to sub-paragraph (2), where a standard refers to material that is to be produced in Welsh, references to treating the Welsh language no less favourably than the English language, or to treating a Welsh language version no less favourably than an English language version, include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards—

- (a) the visual presentation of material (for example in relation to the colour or font of any text);
- (b) the size of the material;
- (c) the position and prominence of the material in any public place;
- (ch) when and how the material is published, provided or exhibited;
- (d) the publication format of material.

(2) A body will not be treating the Welsh language less favourably than the English language if it does not send, display or circulate Welsh language material outside of Wales (with the exception of standard 24A).

27

(1) Standard 18 does not apply to the forms listed in sub-paragraph (2).

(2) The forms are—

- (a) forms used by a body to recruit employees;
- (b) forms used when submitting a tender to enter into a contract with a body.

28

For the purposes of standard 20, references to documents or other materials being available to individuals do not include documents or materials that are only

available by virtue of the Freedom of Information Act 2000⁽¹⁾.

- 29** Standards 20 and 21 do not apply to—
- (a) an enactment made by a body or to a draft enactment prepared by a body; or
 - (b) any advertising material contained in a document, brochure, leaflet, pamphlet or card.
- 30** For the purposes of standard 24 a registrant contacts a body for the first time when it contacts the body for the first time after the date on which a compliance notice has required the body to comply with the standard.
- 31** Standards 26 to 27 (websites) do not apply to—
- (a) documents to which a link is provided on a website, advertising material on a website, or to video and audio clips on a website (see standards 20 and 21 for specific provision in relation to documents and standard 15 in relation to advertising material produced by a body);
 - (b) information presented by persons (other than the body) on an interactive page published on a body's website (for example on a section for comments or on a discussion forum).
- 32** Standards 1 to 4 (correspondence) do not apply to correspondence sent by social media (see standard 28 in relation to social media).
- 33** Standard 28 (social media) does not apply to—
- (a) documents to which a link is provided through social

(1) 2000 c. 36.

media, or to video and audio clips provided through social media (see standards 20 and 21 for specific provision in relation to documents, and standard 15 in relation to advertising material produced by a body);

- (b) information presented by persons (other than the body) on a body's social media account (for example on a section for comments).

34 For the purposes of standards 29 and 30 an "official notice" does not include notices prescribed by an enactment.

35 (1) For the purposes of standard 33, the reference to a body forming or presenting its "corporate identity" includes, amongst other things, the way a body presents itself by means of visual statements, the name or names used by a body, and a body's branding and slogans (for example, branding and slogans printed on its stationery).

(2) Standard 33 does not apply to the extent that an enactment requires a body to use a legal name.

36 For the purposes of the standards "enactment" means an enactment (whenever enacted or made) comprised in, or in an instrument made under —

- (a) an Act of Parliament; or
- (b) a Measure or an Act of the National Assembly for Wales.

SCHEDULE 2 Regulation 2(2)

Policy making Standards

PART 1
THE STANDARDS

1 **Standards relating to considering
the effects of a body's policy
decisions on the Welsh language**

Standard 34: When you formulate a new policy,
or review or revise an existing
policy, you must consider what
effects, if any (whether positive or
adverse), the policy decision would
have on—

- (a) opportunities for persons to
use the Welsh language,
and
- (b) treating the Welsh language
no less favourably than the
English language.

Standard 35: When you formulate a new policy,
or review or revise an existing
policy, you must consider how the
policy could be formulated (or how
an existing policy could be changed)
so that the policy decision would
have positive effects, or increased
positive effects, on—

- (a) opportunities for persons to
use the Welsh language,
and
- (b) treating the Welsh language
no less favourably than the
English language.

Standard 36: When you formulate a new policy,
or review or revise an existing
policy, you must consider how the
policy could be formulated (or how
an existing policy could be changed)
so that the policy decision would not
have adverse effects, or so that it
would have decreased adverse
effects, on—

- (a) opportunities for persons to
use the Welsh language,
and

- (b) treating the Welsh language no less favourably than the English language.

Standard 37: When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, the effects (whether positive or adverse) that the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 38: When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would have positive effects, or increased positive effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 39: When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would not have adverse effects, or so that it would have decreased adverse effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 40: When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research

considers what effects, if any (and whether positive or adverse), the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 41: When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers how the policy decision under consideration could be made so that it would have positive effects, or so that it would have increased positive effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 42: When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers how the policy decision under consideration could be made so that it would not have adverse effects, or so that it would have decreased adverse effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

PART 2

INTERPRETING THE STANDARDS

2

In Part 1 of this Schedule a “policy decision” means any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and

as appropriate to the body),
decisions about—

- (a) the content of legislation;
- (b) the exercise of statutory powers;
- (c) the content of policy statements;
- (ch) strategies or strategic plans;
- (d) internal structures and office locations.

3

In Part 1 of this Schedule a reference to positive or adverse effects is a reference to such effects whether direct or indirect.

SCHEDULE 3 Regulation 2(3)

Operational standards

PART 1

THE STANDARDS

1 Standards relating to a body developing Welsh language skills through planning and training its workforce

Standard 43: You must provide training courses so that your employees can develop—

- (a) awareness of the Welsh language (including awareness of its history and its role in Welsh culture);
- (b) an understanding of the duty to operate in accordance with the Welsh language standards;
- (c) an understanding of how the Welsh language can be used in the workplace.

Standard 44: When you provide information to new employees (for example by means of an induction process), you must provide information for the purpose of raising their awareness of the Welsh language.

2 Standards relating to a body recruiting and appointing

Standard 45: When you assess the requirements for a new or vacant post, you must assess the need for Welsh language skills, and categorise it as a post where one or more of the following apply—

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or

- (ch) Welsh language skills are not necessary.

Standard 45A:

When you advertise a post which you have categorised as one where Welsh language skills are essential, desirable or need to be learnt you must—

- (a) specify that in the advertisement, and
- (b) advertise the post in Welsh.

PART 2

STANDARDS THAT ARE RELIANT ON OTHER STANDARDS – SPECIAL CONDITIONS

- 3** When a compliance notice requires a body to comply with one of the standards listed on a specific row in column 1 of Table 1, that compliance notice must also require that body to comply (in whatever way the Welsh Language Commissioner considers appropriate) with the standard or standards listed in column 2 of that row.

TABLE 1

	Column 1	Column 2
<i>Row</i>	<i>Main standard</i>	<i>Reliant standard</i>
(1)	Recruitment and appointments Standard 45	Standard 45A

PART 3

INTERPRETING THE STANDARDS

- 4** The standards specified in Part 1 of this Schedule must be interpreted as follows.

5

For the purposes of standards 46 and 46A only—

- (a) “post” includes a public appointment;
- (b) “public appointment” means any appointment to a public body or public office.

6

For the purposes of standard 45A the requirement to advertise a post in Welsh does not mean that the advertisement should be produced, sent, published, displayed, made available or issued in Welsh only.

SCHEDULE 4 Regulation 2(4)
Record Keeping Standards

PART 1
THE STANDARDS

1 **Standards relating to a body keeping records**

Standard 46: You must keep a record, in relation to each financial year, of the number of complaints you receive relating to your compliance with standards.

Standard 47: You must keep a record, in relation to each financial year, of the number of new and vacant posts which were categorised (in accordance with standard 45) as posts where—

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or
- (ch) Welsh language skills are not necessary.

PART 2
INTERPRETING THE STANDARDS

2 The standards specified in Part 1 of this Schedule must be interpreted as follows.

3 For the purposes of standards 46 and 47 “financial year” means the body's own financial year.

SCHEDULE 5 Regulation 2(5)
**Standards which deal with
Supplementary Matters**

**PART 1
THE STANDARDS**

1 A body publicising standards

Standard 48: You must ensure that a document which records the standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available on your website.

2 A body publishing a complaints procedure

Standard 49: You must—

- (a) ensure that you have a complaints procedure that deals with how you intend to deal with complaints relating to your compliance with the standards with which you are under a duty to comply, and
- (b) publish a document that records that procedure on your website.

3 A body producing an annual report regarding standards

Standard 50: (1) You must produce a report (an “annual report”), in Welsh, in relation to each financial year, which deals with the way in which you have complied with the standards with which you were under a duty to comply during that year.

 (2) The annual report must include the following information (where relevant, to the extent you are under a duty to comply with the standards referred to)—

- (a) the number of complaints that you received during the

year in question which related to compliance with the standards with which you were under a duty to comply (on the basis of the records you kept in accordance with standard 46);

(b) the number (on the basis of the records you kept in accordance with standard 47) of new and vacant posts that you advertised during the year which were categorised as posts where—

(i) Welsh language skills were essential;

(ii) Welsh language skills needed to be learnt when appointed to the post;

(iii) Welsh language skills were desirable; or

(iv) Welsh language skills were not necessary.

(3) You must publish the annual report no later than 6 months following the end of the financial year to which the report relates.

(4) You must ensure that a current copy of your annual report is available on your website.

4

A body providing information to the Welsh Language Commissioner

Standard 51: You must provide the Welsh Language Commissioner (if requested by the Commissioner) with any information which relates to your compliance with the service delivery standards, the policy making standards or the operational standards with which you are under a duty to comply.

PART 2

INTERPRETING THE STANDARDS

- 5 The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 6 For the purpose of standard 50, “financial year” means the body’s own financial year.
- 7 For the purpose of the standards a requirement to produce or publish any written material in Welsh does not mean that material should be produced or published in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard).

SCHEDULE 6 Regulation 3

General Chiropractic Council
General Dental Council
General Medical Council
General Optical Council
General Osteopathic Council
General Pharmaceutical Council
Health and Care Professions Council
Nursing and Midwifery Council
Professional Standards Authority for Health and Social
Care



Welsh Language Standards (Healthcare Regulators) Regulations

Overview

This consultation seeks views on the draft Regulations to specify Welsh Language Standards for the following bodies:

General Chiropractic Council
General Dental Council
General Medical Council
General Optical Council
General Osteopathic Council
General Pharmaceutical Council
Health and Care Professions Council
Nursing and Midwifery Council
Professional Standards Authority for Health and Social care

These Regulations will enable the Welsh Language Commissioner to place duties on them in relation to the Welsh language.

How to respond

Responses to this consultation should be completed in the response form and e-mailed/posted to the address below to arrive by **15 June 2020**.

We are very aware that all stakeholders are under considerable strain and are facing a period of uncertainty due to the current Coronavirus situation. We will therefore review the closing date in due course to ensure that all stakeholders have a fair opportunity to give the consultation their full consideration.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Address:
Welsh Language Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

email:
UnedIaithGymraegWelshLanguageUnit@gov.wales

Telephone: 03000 256333

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
Website: <https://ico.org.uk/>

Foreword

The Welsh Government is committed to increasing the use of the Welsh language and giving rights to people to use the language when going about their everyday lives. Strengthening the provision of Welsh language services through Welsh language standards is an important contributor to achieving that aim. 122 bodies are currently complying with standards, and the next step on this journey is bringing bodies which regulate health sector professionals and the Professional Standards Authority under the standards system. Other major health sector bodies, including Local Health Boards and NHS Trusts, have been complying with standards since May 2019. Placing professional healthcare regulators within the standards system will further strengthen and mainstream the Welsh language within the health sector.

These bodies may not be ones that people deal with on an everyday basis, but if a member of the public ever finds themselves in a position where they need to complain about a healthcare professional then I believe that they should be able to do so in the language of their choice. The standards are specifically designed for these bodies, with a focus on the services they provide to members of the public. However, the standards also deal with the situation of healthcare professionals if they ever find themselves subject to a fitness to practise hearing.

Since becoming the Minister responsible for the Welsh language I have emphasised that my priority is to see more people using the Welsh language, and I am keen to use the standards system as a means to contribute to reaching that aim. I have committed to review the standards system with a view to reducing the bureaucracy and complexity around the system, but whilst preserving clarity and the rights of users. I hope that these Regulations are a step forward in this regard.

I look forward to receiving the views of stakeholders to this consultation, and will consider them before moving forward to present the final Regulations to the National Assembly for Wales for their approval.

Eluned Morgan AM
Minister for the Welsh Language and International Relations

1. Introduction

1.1 The Welsh Government is preparing Welsh Language Standards ('standards') under the Welsh Language (Wales) Measure 2011 ("the Measure") which give Welsh speakers enforceable rights to use the Welsh language when dealing with bodies. Regulations that specify standards are being introduced gradually. The draft Regulations subject to this consultation have been prepared for the following nine bodies:

General Chiropractic Council
General Dental Council
General Medical Council
General Optical Council
General Osteopathic Council
General Pharmaceutical Council
Health and Care Professions Council
Nursing and Midwifery Council
Professional Standards Authority for Health and Social care (PSA)

1.2 The bodies listed above (apart from the PSA) regulate the practice of a large number of health professionals in the UK. Anyone wishing to work in these regulated professions must register with their relevant regulator who maintain a public register of practitioners. They would not be allowed to practise without being on the register, and must pay a membership fee to the regulators in order to be placed on their register. These regulatory bodies deal with complaints with regard to the practice of health professionals, and they conduct fitness to practise hearings.

1.3 The PSA has a different function to the other bodies. Its function is to oversee the other regulatory bodies, and issue guidance on regulating. They can review decisions made by regulatory bodies about practitioners' fitness to practise. They have a power to appeal decisions to the High Court if they consider decisions made by the regulatory bodies to be insufficient for the protection of the public.

1.4 The draft Regulations set out Standards for these nine bodies, and makes the Standards specifically applicable to them. This means that (subject to one exception in relation to the PSA) the Commissioner is authorised to give the bodies a compliance notice requiring them to comply with those Standards. Making these Regulations will in itself not impose any duties on the bodies. Once the Regulations are made following approval by the National Assembly for Wales, it will be for the Welsh Language Commissioner ("the Commissioner") to choose which standards to impose on individual bodies, and he will do this by issuing a compliance notice to a body. The Commissioner has flexibility in choosing which standards, and the extent to which, a body has to comply as well as setting the date by which the body is required to comply with a standard. The Commissioner sets out that information in a compliance notice which is issued to the body.

1.5 A body will be able to challenge a requirement to comply with a particular standard on the grounds of whether it is reasonable and proportionate. In the first place, a body will be able to present a challenge to the Commissioner, asking him to

determine whether the requirement upon it to comply with a particular standard in the compliance notice is reasonable and proportionate. If they are unable to resolve the dispute, there is a route of appeal available to the Welsh Language Tribunal, and thereafter to the High Court (on a question of law).

- 1.6 We have previously made six sets of Regulations. As a result of which, 122 bodies have received compliance notices from the Commissioner and are currently complying with standards. The last set of regulations specified standards for local health boards, NHS trusts, the Board of Community Health Councils, and Community Health Councils. Making these Regulations for the healthcare regulators will enable more bodies linked to the health sector to be moved from their current Welsh Language Schemes and to be placed under the standards system.
- 1.7 These 9 bodies currently provide Welsh language services to the public in accordance with their Welsh Language Schemes prepared under the Welsh Language Act 1993. The Schemes have been successful in getting these bodies to think about, plan, and provide Welsh language services. Reporting systems around the Schemes also mean that they are used to having their Welsh language provision monitored. However, moving to the standards system, and having to provide Welsh language services as a result of legal duties as opposed to commitments in a Scheme means that Welsh language services have a stronger foundation within the bodies – and the public have rights to those services. There is also a stronger enforcement system attached to the standards system.
- 1.8 These standards have been drafted with the aim of creating duties from which the Commissioner can choose what is reasonable and proportionate for each body to comply with. The Standards make it clear to the public which Welsh language services they can receive from the bodies and to the bodies what they need to do in terms of the Welsh language.

2. Background

- 2.1 Between July and October 2016 a public consultation was held on draft Welsh Language Standards Regulations for health sector bodies. As well as specifying standards for bodies such as local health boards, NHS trusts, and community health councils, those draft Regulations proposed to amend the Welsh Language Standards (No.4) Regulations 2016 so as to include the bodies listed in 1.1. The No 4 Regulations were made in March 2016 and were applicable to Welsh Tribunals and the Education Workforce Council. The proposed amendment would have meant that the standards in the No 4 Regulations would be specifically applicable to the Regulators.
- 2.2 The Welsh Ministers decided after analysing and considering responses to the consultation that they would not pursue the policy of adding the bodies to the No. 4 Regulations, and would prepare separate, specific Standards for them instead.
- 2.3 The purpose of this consultation is to consult on Regulations which have been prepared in a bespoke manner taking into account the functions and structures of these Regulatory bodies, and which services they provide to the public. We are eager to hear from anyone with an interest in the draft standards, and in the use of

Welsh by these bodies. This consultation will be open until 15 June 2020 to ensure that all interested stakeholders have ample opportunity to have their say on the Regulations.

3. The draft Welsh language standards regulations

3.1 Service delivery standards

Service delivery standards relate to the delivery of services to another person. They are intended to promote or facilitate the use of the Welsh language, or to ensure that it is treated no less favourably than English. This consultation seeks your views on the appropriateness of the service delivery standards included in the draft Regulations.

This consultation document does not discuss each individual standard, but sections 3.2-3.4 below highlight some matters which may be of particular interest to stakeholders. The draft Regulations includes standards which relate to the following activities:

Correspondence	Displaying material in public
Telephone calls	Producing and publishing documents and forms
Meetings	Legal proceedings
Public events	Websites and on-line services
Publicity and advertising	Using social media
Official notices	Raising awareness about Welsh language services
	Corporate identity

3.2 Stakeholders should note that the main policy objective of the service delivery standards in Schedule 1 are to ensure that individual members of the public are able to use Welsh when dealing with these bodies, in particular when making a complaint, accessing information regarding complaining, or accessing information on what to expect from a healthcare professional. Many service delivery standards therefore only apply when the bodies are providing services to an “individual”. Regulation 1 defines an “ ” as “

”. This means that many of the Standards will not apply when registrants are dealing with the body in their capacity as a registrant. A registrant means a person ordinarily resident in Wales who is registered or applying to be registered with the body.

3.3 In their responses to the consultation in 2016, some of the Regulatory bodies expressed a concern about the financial implications of having to provide Welsh language services to their registrants. This, coupled with the content of their current Welsh Language Schemes, have led us to prepare Standards which only apply in limited circumstances when the body deals with their registrants or a corporate body. The focus in most standards is on ensuring that members of the public can use Welsh when dealing with the bodies. The standard itself clarifies who is able to access a Welsh language service. For example, standard 1 applies to correspondence received from ‘persons’ which includes individuals, registrants and

corporate bodies. In other cases, registrants are referred to expressly – see for example the standards relating to legal proceedings (standards 22 to 25).

3.4 Due to the nature of these bodies we have prepared specific service delivery standards which relate to **legal proceedings** (standards 22-25). It is important to note that section 22 of the 1993 Welsh Language Act gives people the right to use Welsh in legal proceedings in Wales. As was the case with tribunal hearings held by those subject to the Welsh language standards (No. 4) Regulations 2016, fitness to practice hearings held by these bodies are regarded as legal proceedings and would come under the provision made in section 22 of the 1993 Act. Standards 22-25 in the draft regulations have been prepared to complement that right and ensure that registrants would be able to use Welsh throughout this sensitive and personal process. The standards would allow registrants to submit documentation and written submissions in Welsh, and places a duty on the regulators not to treat Welsh language documents less favourably than English ones. The provision in the 1993 Act only makes provision about speaking Welsh, therefore these standards would allow a registrant submit documents written in Welsh. Standard 23A also makes provision to allow a registrant to use Welsh if the fitness to practice hearing were held in England. This was included due to the fact that some Regulators do not hold hearings in Wales. If a registrant from Wales found themselves subject to a hearing in England it would not come under the provisions of the 1993 Act. The Commissioner will not be able to impose Standards relating to legal proceedings on the PSA because it does not undertake legal proceedings.

3.5 We have taken into account that these are bodies that operate across the UK. We have therefore specified that some of the standards can only apply when services are provided in Wales. For example, standards relating to meetings (standards 8-12), standards relating to displaying material in public (standards 16-17), and standards relating to official notices (standards 29-30). The Standards which relate to correspondence sent, forms and documents are not limited to material produced exclusively for individuals in Wales. They apply to material which is produced for individuals within and outside Wales. However, the Welsh language version would not have to be distributed outside of Wales (see paragraph 21 of Schedule 1).

3.6 Policy making standards

Policy making standards require bodies to consider what effect their policy decisions will have on the ability of persons to use the language and on the principle of treating Welsh no less favourably than English. We are keen to see policy making standards being made specifically applicable to all bodies that the Welsh Ministers are able to as it is a means of trying to ensure that factors concerning the Welsh language are mainstreamed through the bodies' policies. We therefore propose that nine policy making standards are included in the Regulations (standards 34-42).

The standards included in the regulations will require bodies to consider the effects of their new or amended policies on the Welsh language, and will place specific duties on bodies which will come into effect when they publish consultation documents or conduct research.

3.7 Operational standards

A body is able to challenge a standard imposed on it on the basis that the standard is not reasonable or proportionate for it to comply with. Careful consideration has therefore been given when creating the draft standards to the structures and functions of the bodies in question to ensure that the range of standards provide the Commissioner with standards which are likely to be both reasonable and proportionate for the bodies to comply with. In the case of operational standards, which generally deal with the internal use of Welsh by bodies, we also had to consider where these UK-wide bodies are located and their current staffing levels.

The General Medical Council is the only one of these bodies which has an office in Wales. Currently, that is a small office in Cardiff housed in a shared office block with no reception area which is not usually open to the public. The vast majority of its staff work in other offices outside of Wales. The other eight bodies do not have an office in Wales. It also became evident that all of these bodies currently have a low number of staff with any Welsh language skills. The priority policy outcome therefore when developing operational standards was to try to encourage these bodies to increase their capacity with regards to Welsh language skills.

Four operational standards have therefore been included in the Regulations (standards 43-45). These standards place duties on the bodies to raise awareness of the Welsh language amongst their staff, and require the bodies to assess whether Welsh language skills are required when advertising new or vacant posts. The basis for including these standards is to place duties on the bodies to consider the Welsh language when planning their workforce which will hopefully lead to the bodies being better equipped to provide Welsh language services to service users in future.

3.8 Record keeping standards and standards dealing with supplementary matters

Six standards have been prepared in these categories (standards 46-51). The number of record-keeping and supplementary standards have been reduced compared to the No 4 regulations in order to reduce the bureaucracy attached to the standards system for these bodies. Under these standards the bodies will be required to keep a record of the number of complaints made to them regarding compliance with standards, and to keep a record of how new and vacant posts were categorised in relation to Welsh language skills. Bodies will also, under their supplementary standards, be required to produce various documents including an Annual Report. They are currently committed to producing an Annual Report under their Welsh Language Schemes.

4. Regulatory Impact Assessment (RIA)

4.1 As part of the previous consultation on draft standards for the health sector in 2016, the bodies subject to these draft Regulations were asked to submit information to allow the Welsh Government to prepare a RIA to accompany the Regulations when they were being laid at the Assembly.

4.2 There are significant differences between the draft Regulations subject to this consultation and what was proposed in the consultation in 2016. We are therefore

asking the bodies to consider the draft Regulations now being consulted upon, and submit new information. The purpose of the RIA is to help the Welsh Ministers consider the impact of proposed regulations and to consider the costs and benefits of all options available to them before implementing a policy. It is also a means of presenting for scrutiny the relevant evidence on the positive and negative effects of policies.

- 4.3 The nine bodies subject to the draft regulations are asked to complete the questions attached at Annex B, below. **Annex B does not apply** to other stakeholders.

ANNEX A:

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Question 1: Do you have any comments on the service delivery standards proposed in the regulations?

Question 2: Part 3 of Schedule 1 to the Regulations includes interpretations for some of the Service Delivery Standards. Paragraphs 16-37 explains how some of the standards work and if what circumstances they apply. Do you have any comments on the interpretation of standards as set out in Part 3?

Question 3: Do you have any comments on the policy making standards proposed in the regulations?

Question 4: Do you have any comments on the operational standards proposed in the regulations?

Question 5: Do you have any comments on the record keeping standards and standards dealing with supplementary matters proposed in the regulations?

Question 6: We would like to know your views on the effects that these regulations would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 7: Please also explain how you believe the regulations could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 8: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

☐



Llywodraeth Cymru
Welsh Government

Regulatory Impact Assessment of the proposed Welsh language standards regulations.

Introduction

A Regulatory Impact Assessment (RIA) can be regarded as:-

- a process to help the Welsh Ministers consider the impact of proposed regulation on the interests of individuals, groups, organisations etc.
- a tool to enable the Welsh Ministers to weigh the costs and benefits of all options available to them before implementing a policy; and,
- a means of presenting for scrutiny the relevant evidence on the positive and negative effects of such interventions.

It is important that the Welsh Government receives detailed and accurate information in the responses to the questionnaire below, so that we are in the best possible situation to provide full information to the National Assembly for Wales as part of the process of making standards through subordinate legislation.

The Welsh Government has published a Regulatory Impact Assessment Code, which can be read in full here:

<https://gov.wales/welsh-ministers-regulatory-impact-assessment-code-for-subordinate-legislation>

Queries regarding this document should be directed to the Welsh Language Division:

UnedlaithGymraegWelshLanguageUnit@Wales.GSI.Gov.UK

Name of the body: _____

When answering questions 1 to 7 below, please note the following:

You should identify the cost of a member(s) of staff in figures rather than in the salary bands for your body

If a member of staff works across different categories of standards please identify the cost **once only**

All costs should be to the nearest £'000

In questions 3 to 7 we require information regarding any **additional** costs associated with complying with standards, compared to the costs of complying with your current Welsh language Scheme.

Complying with the standards may mean you need to use existing resources (including staff resources) in a different way to before. While there might not be an additional financial outlay associated with this, there could still be an opportunity cost (because the resources are no longer available for their alternative/previous use). This opportunity cost should be reflected in your response (for example, by estimating the value of staff time involved).

Please note in the comments boxes below questions 3 to 7 whether you expect any additional costs identified to be transitional or ongoing costs

You may also note in the comments boxes any opportunities identified for saving costs as a result of complying with standards.

1. Are there benefits to the body in complying with the draft Welsh language standards proposed in this document?

Yes	
No	

Is yes, what are these benefits?

Type of benefit	Description of the benefit of complying with the proposed standards
Economic Benefit	
Social Benefit	

Environmental Benefit	
Linguistic Benefit	
Other – please be as specific as possible	

2. What is the annual cost of complying with the current Welsh Language Scheme?

	Cost
Costs of complying with the Welsh language scheme (staff costs should not be included)	

Further details on how the cost has been calculated:

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3. Staffing Costs

Please note the staffing costs associated with delivering the commitments in your current Welsh Language Scheme, and any additional staffing costs that will be incurred by having to comply with the standards specified in the Regulations being consulted upon:

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4. Service delivery standards

The service delivery standards can be seen at Schedule 1 in the draft regulations.

Are the duties in the draft service delivery standards likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft service delivery standards	

Further details (for examples, are there specific delivery standards which are likely to generate an additional cost to your organisation, how have you estimated the additional cost and in which year(s) do you expect the cost will be incurred?)

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5. Policy making standards

The policy making standards can be seen at Schedule 2 in the draft regulations.

Are the duties in the draft policy making standards likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft policy making standards	

Further details

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6. Operational standards

The operational standards can be seen at Schedule 3 in the draft regulations.

Are the duties in the draft operational standards likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft operational standards	

Further details

7. Record keeping standards and standards dealing with supplementary matters

The record keeping standards can be seen at Schedule 4 in the draft regulations and standards dealing with supplementary matters can be seen at Schedule 5.

Are the duties in the draft record keeping standards and standards dealing with supplementary matters likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft record keeping standards and standards dealing with supplementary matters	

Further details

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Consultation on the Welsh Language Standards (No.8) Regulations for healthcare regulators and the Professional Standards Authority
DATE	16 March 2020
BY	Eluned Morgan AM, Minister for International Relations and Welsh Language

Today I am pleased to be launching a [consultation](#) on the draft Welsh Language Standards (No.8) Regulations. These Regulations seek to set out Welsh Language Standards for the following nine bodies:

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- General Pharmaceutical Council
- Health and Care Professions Council
- Nursing and Midwifery Council
- Professional Standards Authority for Health
and Social care

This consultation has been scheduled for some time and I have decided to go ahead with it as planned. However I am very aware that all stakeholders are under considerable strain and are facing a period of uncertainty due to the current Coronavirus situation, none more so than health sector bodies. We will therefore review the closing date in due course to ensure that all stakeholders have a fair opportunity to give the consultation their full consideration.

These Standards, like others before, will make it clear which Welsh language services people can expect to receive from these bodies. They also set out clearly what these bodies need to do in terms of the Welsh language.

I very much look forward to hearing the views of stakeholders by the closing date currently stated as 15 June and will consider all points raised before moving forward to prepare the final Regulations for Senedd Cymru.

Ein cyf/Our ref MA-L/VG/0874/20

Elin Jones, AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

17 March 2020

Dear Elin,

The Health Protection (Coronavirus) (Wales) Regulations 2020

I have today made the Health Protection (Coronavirus) (Wales) Regulations 2020 under sections 45B, 45C, 45F and 45P of the Public Health (Control of Disease) Act 1984 which comes into force on 18 March 2020. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the National Assembly for Wales by 4 May 2020 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I understand that on this occasion the Business Committee has agreed this is not necessary.

I am copying this letter to **Rebecca Evans AM**, Minister for Finance and Trefnydd, **Mick Antoniw AM**, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,



Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted