

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

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the Senedd in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
20 October 2020

PART 1

1. Description

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020 (“this instrument”) amends the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W.48) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. This instrument also amends the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019. The purpose of this instrument is the maintenance of biosecurity. This instrument also amends Schedule 3 to the 2020 Regulations as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts.

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

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over elements of these Regulations because they are giving effect to EU provisions. Further, these Regulations amend Regulations that were subject to the negative procedure.

3. Legislative background

The EU Plant Health Regulation ((EU) 2016/2031) and the EU Official Controls Regulation ((EU) 2017/625) (“the EU Regulations”) establish controls and restrictions which apply to the import (from third countries), and internal movement within and between EU Member States, of certain plants, plant pests and other material (such as soil). The purpose of the Regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests.

The EU Regulations, and the tertiary legislation made under the Regulations, are directly applicable in the United Kingdom. Domestic legislation is not needed to implement the substantive provisions in this EU legislation. However, supplementary domestic provisions are necessary to enable the competent authorities (in Wales, the Welsh Ministers) to carry out their obligations under the EU Regulations, enforce the Regulations and implement derogations to various provisions in the EU legislation that are available to member States. The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (“the 2020 Regulations”) contain these supplementary domestic provisions. Separate but parallel legislation is in place in England, Northern Ireland, and Scotland.

The Welsh Ministers have powers to make this instrument. They are designated in relation to the common agricultural policy under the European Communities Act 1972 (see S.I. 2010/2690) and powers under section 56 of the Finance Act 1973 are conferred on them by section 59(5) of the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

This instrument updates the references in the 2020 Regulations to 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, Tsuyumu & Goto, which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/885.

This instrument also updates the references in the 2020 Regulations to Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus, which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/1191.

This instrument enables the Welsh Ministers to authorise the use of potential quarantine plant pests (a pest or disease which has provisionally been assessed as having the potential to be a Quarantine Pest but for which a full risk assessment has not yet been completed) for official testing, scientific or educational purposes, trials, varietal selection or breeding. These pests would be managed in line with strict biosecurity requirements with routine inspections to ensure compliance. This instrument also amends the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 to provide a mechanism for the Welsh Ministers to charge for the issue of licences authorising the use of such plant pests.

This instrument amends Schedule 3 to the 2020 Regulations to enable the enforcement of Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts.

5. Consultation

This instrument has not been the subject of consultation.

6. Regulatory Impact Assessment (RIA)

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.

There are no significant financial implications. The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business. The new measures concern pests which are already subject to Animal and Plant Health Agency inspection and surveillance programmes.

There is no, or no significant, impact on business, charities or voluntary bodies.

With regard to the Government of Wales Act 2006 this legislation has no impact on statutory partners (sections 72-75) or the statutory duties (sections 77-79).