

Explanatory Memorandum to the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Forest Resources Policy Branch within the Economy, Skills and Natural Resources Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020. I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

17 November 2020

PART 1

1. Description

- 1.1 The Plant Health (Forestry)(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 amend the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (2019/735 W.138) which amends the Forest Reproductive Material (Great Britain) Regulations 2002 (S.I. 2002/3026) and the Plant Health (Forestry) (Fees) (Wales) Regulations 2019 (2019/497 W.114) in relation to Wales.
- 1.2 The Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 amendments implement Great Britain's decisions on the equivalence of forest reproductive material produced in countries outside Great Britain and set out the revised requirements which apply in Wales. This is necessary to maintain standards of imported forest reproductive material and associated biosecurity.
- 1.3 These amendments are necessary to reflect the post-transitional position of Wales within Great Britain arising from the UK's withdrawal from the EU and maintain alignment with the law in England and Scotland. The amendments are technical in nature with no changes to policy.
- 1.4 Regulations 1, 2, 3 and 5 come into force immediately before IP Completion Day as defined in s.39 European Union (Withdrawal Agreement) Act 2020 as 11pm on 31st December 2020. Regulations 4 and 6 come into force on IP Completion Day.

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

- 2.1 In accordance with paragraph 1(8) of Schedule 7 to the 2018 Act the Regulations are subject to the draft affirmative procedure as they relate to fees in respect of a function exercisable by a public authority in the UK.

3. Legislative background

- 3.1 The Regulations are being made in exercise of the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before IP Completion Day

- 4.1 Implementing Regulation (EU) 2019/2072 establishes the EU plant health regime and provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.
- 4.2 This Regulation is implemented in Wales, in relation to forestry matters, via the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 whose purpose is to prevent the introduction and spread of harmful plant pests and diseases. It sets out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society.
- 4.3 The Forest Reproductive Material Directive ensures that forest reproductive material produced in the EU is traceable through the collection and production process to registered sources of basic material (e.g. trees from which the seed is collected or cuttings taken). This allows those who buy forest reproductive material to have sufficient information about the material, such as provenance and origin.
- 4.4 The Forest Reproductive Material (Great Britain) Regulations 2002 implement EU decisions on the equivalence of forest reproductive material produced in countries outside the European Union. The Regulations set out the requirements which apply in Great Britain regarding the categorisation of forest reproductive material, approval of basic material for entry in the National Register, collection and production of forest reproductive material, registration of suppliers, marketing and movement of forest reproductive material between Great Britain and elsewhere within the European Community. Similar but separate legislation operates in Northern Ireland.
- 4.5 The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 prescribes the fees relating to forestry activities, such as plant health checks. This enables cost effective implementation of the plant health regime in relation to forestry.

Why is it being changed?

- 4.6 Since making those earlier EU Exit SIs, a Withdrawal Agreement between the UK and the EU has been signed. It is necessary to update those earlier EU Exit SIs and make further amendments to retained EU

law to ensure they function effectively after IP Completion Day. Amendment is also necessary to allow for operability of the Protocol on Ireland/Northern Ireland in relation to Forestry Reproductive Material (Northern Ireland) Regulations 2002. This instrument also removes amendments to the Plant Health (Forestry) Order 2005 which was replaced by the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020.

What will it now do?

- 4.7 The Regulations amend provisions which are inappropriate or redundant as a result of the withdrawal of the UK from the EU. It makes changes to ensure that the law functions correctly after IP Completion Day for example to remove references to the Commission, Community, Member States and third countries, and to remove reporting obligations to the Commission which will no longer be appropriate. It will ensure that plant health (forestry) legislation in Wales which implements current EU protective measures against the introduction and spread of organisms harmful to plants or plant products, remains effective and continues to be operable after IP Completion Day.

5. Consultation

- 5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is to enable the current legislative and policy framework to remain operable after IP Completion Day.

6. Regulatory Impact Assessment (RIA)

- 6.1 An impact assessment has not been prepared for this instrument because the direct impacts on businesses, charities, voluntary bodies or the public sector are expected to be negligible and not requiring an impact assessment.
- 6.2 The Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 Not applicable.

2. Appropriateness statement

2.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate”.

2.2 This is the case because the Regulations largely correct technical deficiencies that will arise from withdrawal and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively, in Wales, once we leave the EU. This is in line with Government policy.

3. Good reasons

3.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”.

3.2 This is because there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist. The public would also expect us to be able to take enforcement action against those that are in breach of plant health (forestry) legislation. In addition, businesses would expect us to provide conditions within Wales that support the trade and movement of plant material.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

- 4.3 Little or no impact on equalities is expected.

5. Explanations

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

6. Criminal offences

- 6.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the creation of criminal offences and for the penalties in respect of them in the Plant Health (Forestry) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.”

- 6.2 Amendments to existing offences will be needed to reflect new requirements introduced through the Plant Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 for regulated third country goods which enter Wales via the EU, which have not been subject to plant health checks in the EU and arrive at fast-moving, high volume Ro-Ro ports. The new requirements will require these goods to be moved inland and held securely until plant health checks have been completed. The new offence will provide the ability to enforce and prosecute serious cases of non-compliance with these new requirements.
- 6.3 In addition, a new criminal offence is also required to enforce any failure to comply with any prohibition or restriction in demarcated areas to prevent the spread of certain harmful plant pests in cases where this is an outbreak involving certain pests.
- 6.4 Offences under the Plant Health (Wales) Order 2018 carry, on summary conviction, a penalty of a fine not exceeding level 5 on the standard scale.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.