

Explanatory Memorandum to the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2021

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources 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 Plant Health (Amendment) (Wales) (EU Exit) Regulations 2021.

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 MS

Minister for Environment, Energy and Rural Affairs

2 February 2020

Part 1

1. Description

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2021 (the “instrument”) will make amendments to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 which apply in relation to Wales.

This instrument will come into force the day after it is made.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) and 11M of Schedule 2 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies and to deal with matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the draft affirmative procedure.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converted the majority of directly applicable EU law as it stood immediately before implementation period completion day into domestic law and preserved laws made in the UK which implemented EU obligations. The Withdrawal Act also created temporary powers to make secondary legislation to deal with deficiencies that arise from the UK’s exit. Section 11 of and paragraphs 1 and 11M of Schedule 2 to the Withdrawal Act provide the Welsh Ministers with powers to address deficiencies and deal with matters related to the Protocol on Ireland/Northern Ireland.

In accordance with the requirements of the Withdrawal 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

The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate between Northern Ireland and Great Britain (“GB”) and within GB in relation to Qualifying Goods. It facilitates the policy of unfettered market access in relation to Qualifying Goods.

This instrument makes amendments to allow movements of Qualifying Goods into GB under an EU Plant Passport. Once in GB, an EU Plant Passport can continue to accompany the Qualifying Goods.

What the instrument does

This instrument amends the following legislation in the field of plant health:

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 which gave effect to Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants and 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).

The UK Government are making amendments that are connected to this instrument and that include equivalent amendments to equivalent secondary legislation that applies to England, in the Plant Health (Amendment) (EU Exit) Regulations 2020.

The amendments included in this instrument will ensure the continued functioning of plant health controls within GB, and between Northern Ireland and GB, in relation to Qualifying Goods and will enable enforcement action to be taken, where appropriate, on such goods. This instrument supplements the policy on unfettered market access for qualifying Northern Ireland goods, assists in clarifying how this access operates for plant health and allows enforcement action to be taken in GB if plants and plant products that are Qualifying Goods are moved into, and within, GB otherwise than in a permitted manner.

If this domestic secondary legislation was not amended, it would contain deficiencies that would prevent the Welsh Ministers from being able to deliver workable legislation on plant health. The instrument is made in exercise of powers under the Withdrawal Act to correct these deficiencies. The legislation being amended would not have the right effect as it would not reflect the change in the legislative position following the withdrawal of

the UK from the European Union and the application of the Protocol in Northern Ireland.

5. Consultation

Stakeholders have not been consulted on the amendments made by this instrument as they are technical operability amendments as opposed to policy changes.

6. Regulatory Impact Assessment (RIA)

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

Therefore, an RIA has not been completed as there are no impacts as result of the amendments detailed within this instrument.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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
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 committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
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	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. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
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 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
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

Part 2

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

1. Appropriateness statement

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

“In my view the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2021 do no more than is appropriate”.

This is the case because this instrument contains amendments to ensure the continued functioning of plant health controls in relation to Qualifying Northern Ireland goods moving from Northern Ireland to GB, and within GB, following the end of the Transition Period.

2. Good reasons

The Minister for Environment, Energy and Rural Affairs 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 instrument, and I have concluded they are a reasonable course of action”.

These are that there is public concern about biosecurity and the Government should at least maintain the protections that currently exist.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2021 do 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.”

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

“In relation to the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2021, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in section 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.