

**Explanatory Memorandum to the Plant Health etc. (Fees) (Wales)
(Amendment) 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Plant Health etc. (Fees) (Wales) (Amendment) Regulations 2020.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

29 January 2020

PART 1

1. Description

These Regulations amend the Plant Health etc. (Fees) (Wales) Regulations 2018 ('the principal Regulations') which specify fees payable to the Welsh Ministers in relation to plant health services and the certification of seed potatoes and fruit plants and fruit plant propagating material.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

These Regulations are made in exercise of powers in section 56(1) and (2) of the Finance Act 1973 – those powers are conferred on the Welsh Ministers by virtue of section 59(5) of the Government of Wales Act 2006. The powers permit the Welsh Ministers to make regulations which require the payment of fees or other charges for the provision of any services or facilities or the issue of any authorisation, certificate or other document, in pursuance of any EU obligation. This instrument requires and has received Treasury consent.

This instrument is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

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 Plant Health Directive') establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Plant Health Directive is implemented in Wales, for non-forestry matters, by the Plant Health (Wales) Order 2018. Similar but separate legislation operates in England, Scotland and Northern Ireland.

The Plant Health Directive has been amended, among other amendments, by Council Directive 2002/89/EC (OJ No. L 355, 30.12.2002, p. 45). Among the changes introduced by this Directive was clarification of the existing requirement for mandatory examinations (documentary checks, identity checks and physical inspection) of certain plants and plant produce and obligations to charge fees for these inspections. The Plant Health Directive (Article 13a(2)), contains a procedure for reducing the rate of inspections of certain plant material imports and for charging a correspondingly reduced fee for inspections (Article 13d(2)).

The Plant Health Directive was replaced on 14 December 2019 by Regulation (EU) 2016/2031 (OJ No. L 317, 23.11.2016, p. 4) (the 'Plant Health

Regulation”) on protective measures against pests of plants and Regulation (EU) 2017/625 (OJ No. L 95, 7.4.2017, p. 1) (the “Official Controls Regulation”) 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. Article 165, paragraph 2 of the Official Controls Regulation allows the relevant articles of Directive 2000/29/EC as regards the procedure for reducing the rate of inspections of certain plant material imports to continue to apply until 14 December 2022, or earlier if a delegated act is adopted.

The authority to charge fees for inspections is contained in the principal Regulations. The purpose of these Regulations is to reflect changes in certain import inspection fees.

Import inspection services

The Plant Health Directive requires mandatory examinations (documentary checks, identity checks and physical inspection) of plants for planting, potatoes, certain major fruits, cut flowers and some leafy vegetables imported from countries outside the EU.

Under the Plant Health Directive, the required level for inspections is specified at 100%. However, there is provision for the level of physical inspection to be reduced for consignments of plant produce (e.g. cut flowers, fruit and vegetables) from specific countries if there is evidence that material from that source has been found to be free from pests and diseases during trade over a three-year period. In plant health terms, plant produce poses a significantly lower risk than planting/propagating material as it is not planted or propagated and is generally either consumed or disposed of away from agricultural and horticultural production sites. Planting material and potatoes are excluded from risk-targeted checks arrangements and are subject to the mandatory 100% inspection level.

A European Commission working group meets annually to consider applications from Member States for reductions in inspection levels and reviews agreed levels using trade and interception data from Member States over the previous year. The working group makes recommendations for future inspection levels for consideration by the Standing Committee on Plants, Animals, Food and Feed (SCOPAFF). Levels of inspection can be increased or eligibility for any reduction removed if Member States report any pest or disease problems identified with a trade approved for reduced checks. If more than 1% of consignments imported into the EU have been found to contain pests or diseases in any year then that trade is not eligible for reduced inspection levels. Since the risk-targeted checks regime was introduced in 2006, several trades, which had been approved for reduced inspections, have had the approval removed in response to interceptions of pests or diseases by Member States. None of those cases resulted in a pest or disease outbreak within the EU.

Implementation of the risk-targeted check provisions is discretionary. Member

States can choose not to apply reduced inspection levels and continue to inspect all imported plants and plant produce. However, the reduced checks system reflects the established principle of risk-targeting. Adopting these provisions saves on inspections of low risk produce entering Wales and allows resources to be focussed on targeting trade in planting/propagating material which presents the highest risks. It also means that inspections of material which are currently unregulated under the Plant Health Directive can be carried out, looking for evidence of emerging threats, which can then be considered for incorporating in the EU plant health regime. This evidence feeds into an EU process to consider actions in response to persistent interceptions, which may include audits or new import requirements (for instance, fresh peppers and tomatoes, which were previously unregulated under the EU plant health regime, now require a phytosanitary certificate to be imported, in response to pest findings). SCOPAFF monitors interception levels on a monthly basis and agrees actions in response to problematic trades.

In the event of the withdrawal of the UK from the EU on 31 January 2020, it is anticipated an Implementation Period would apply until the end of 2020. During this period the UK would continue to apply EU requirements including those on imports and the system of reduced frequency import inspections described above. Therefore, although these Regulations are related to EU arrangements, and the UK is not expected to be member of the EU when they take effect, the system of import inspections, including scope for reduced frequency checks, will not change immediately on exit. Hence, it is important to make these changes.

Article 79 of the Official Controls Regulation requires charges to be raised to cover the costs of import checks. In accordance with Article 82(1) fees are charged at a flat rate based on the overall cost of the import inspections and applied to all importers irrespective of whether consignments are inspected or not.

Under the principal Regulations, reduced checks apply to 44 trades. These Regulations implement the latest changes recommended by the European Commission's Reduced Checks Working Group held in June 2019, which were agreed by SCOPAFF in November 2019. The outcome of this year's meeting saw increases in levels of inspection on five trades, including to 100% in the case of *Citrus Limon* and *C Aurantifolia* fruit from Israel and stone fruit from USA, with matching increases in fees, as follows:

- Lemon and lime fruit from Israel (from 25% to 100%);
- Passion fruit from South Africa (from 35% to 50%);
- Passion fruit from Zimbabwe (50% to 75%);
- Stone fruit (other than peaches) from South Africa (from 5% to 10%);
- Stone fruit from USA (50% to 100%).

Further evidence of compliance was available for one trade resulting in levels of inspection decreasing, with matching decreases in fees, as follows:

- Aubergines from Turkey (25% to 15%).

Three additional trades were shown to pose minimal plant health risks and were accepted for reduced inspection levels. The inspection rate for consignments of the following has therefore decreased, with a matching decrease in fees:

- Citrus fruit from Mexico (from 100% to 50%)
- Vaccinium fruit from Chile (from 100% to 10%)
- Vaccinium fruit from Peru (from 100% to 10%).

Details of all the trades subject to reduced levels of physical inspection and the relevant fees are included within the revised Schedule 2 inserted by Regulation 2(3) of these Regulations.

Import of potatoes from Lebanon

Under the Plant Health Regulation the import of potatoes is prohibited from most third countries because of the risk of introduction of harmful organisms. Commission Implementing Decision 2019/1614 of 26 September 2019 provides for the import of potatoes, other than those intended for planting (ware potatoes), originating in the regions of Akkar and Bekaa of Lebanon, where evidence has been provided that potatoes are grown under adequate phytosanitary conditions to ensure freedom from harmful organisms, particularly *Clavibacter michiganensis*. Commission Implementing Decision 2019/1614 permits the import of such potatoes subject to official sampling on arrival in the EU to ensure freedom from *Clavibacter michiganensis*. Regulation 2(2) of these Regulations prescribes a fee for each lot sampled.

5. Consultation

No consultation was conducted in the preparation of these Regulations. These Regulations implement annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

6. Regulatory Impact Assessment (RIA)

The impact on business, charities or voluntary bodies is minimal.

There is no, or no significant, impact on the public sector.

An Impact Assessment has not been prepared for this instrument as it implements annual changes in fees in line with a predetermined level rather than fundamental changes to the regulatory regime itself.

7. Monitoring and review

The trades eligible for reduced levels of inspection are subject to an annual review by the European Commission.