

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

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National Assembly for Wales

Legislation, Justice and Constitution Committee