

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

23 November 2023

Dear Lesley

The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023

At our meeting on 20 November 2023 we considered the draft Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023 and the Welsh Government's response to our draft reporting points. You will be aware that our final report has since been laid before the Senedd.

While we welcome receiving the Welsh Government response to our draft reporting points in time for the response to be included as part of our full consideration of the draft Regulations, there remain some matters on which we consider further information and clarification is required.

Our second technical reporting point highlights that Regulation 3(5C) of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 ceased to have effect on 31 December 2022, by virtue of regulation 3(5D) in those Regulations. You will know that we asked how the Welsh Government considers that using the 2023 Regulations to substitute the date in regulation 3(5D) of the 2019 Regulations revives regulation 3(5C) of those same 2019 Regulations.

In response we were told that regulation 3(5C) "has never been revoked, but has had (until these Regulations) no legal effect since 1st January 2023". We were also told that "Regulation 3(5D) as now amended and which sits separately to regulation 3(5C) revives regulation 3(5C) of the 2019 Regulations by retrospectively providing for the continuation in period of the effect of regulation 3(5C)."



We understand that regulation 3(5D) in the 2019 Regulations effectively revoked regulation 3(5C) on 31 December 2022; the words "*Paragraph (5C) ceases to have effect*" amounting to a revocation on the specified date, even if the word "revoked" is not expressly used. We therefore consider that, after 31 December 2022, paragraph (5D) in regulation 3 remained in place but had no legal effect, whereas paragraph (5C) had been revoked. The advice we have received indicates that paragraph (5D) may be revived by amending the relevant date (subject to any concerns about retrospectivity). We remain unclear as to why express re-statement of paragraph (5C) is not required to ensure that the amended paragraph (5D) has its intended legal effect. This would appear to accord with the principle set out in both the *Interpretation Act 1978* and the *Legislation (Wales) Act 2019* that repeal of a repealing provision (A) by provision (B) does not revive anything repealed by (A) in the absence of express words to that effect. Even if there is doubt as to the strict necessity of re-stating paragraph (5C) of regulation 3, we consider that it would provide legal certainty and clarity to the reader, which is particularly important when legislation is being changed retrospectively.

We would therefore welcome further information to clarify why the Welsh Government does not consider it necessary to expressly re-state paragraph (5C) of regulation 3 in the 2019 Regulations.

Our third reporting point notes that there appear to be inconsistencies between the Explanatory Note and the effect of the amendments made by these Regulations. We highlighted that the Explanatory Note states "Regulation 2 amends the Plant Health etc. (Fees) (Wales) Regulations 2018 by providing that the relevant date for fees to become payable under regulation 5A(4A) is 30 June 2025.

Regulation 3 amends the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 by providing that the relevant date for fees to become payable under regulation 3(5C) is 30 June 2025." However, it is our understanding that regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations provide for the exemption from the payment of fees, but the fees are not payable under these particular paragraphs and once the fees become payable, these paragraphs cease to have effect. Furthermore, we consider that the effect of the amendments is that regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations cease to have effect at the end of 30 June 2025, and that, therefore, the fees will become payable on 1 July 2025.

In response we were told that "Clarity and consistency in the Explanatory Notes with the Regulations is desirable. However, the Explanatory Notes do not form part of the Regulations and the Regulations are correctly stated."

Even though the Explanatory Note does not form part of the Regulations, they appear alongside the Regulations in the same document. We would be grateful for your views on whether an Explanatory Note which contains information that is inconsistent with the corresponding regulations could adversely affect the accessibility of the law.

We would be grateful if you would address these matters during the Plenary debate on the draft Regulations, scheduled to take place on 28 November 2023, as well as providing a full written response by 30 November 2023.

Yours sincerely,

Huw Irranca-Davies

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Chair

