

SL(5)793 – The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021

Background and Purpose

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021 (the “Regulations”) are made by the Welsh Ministers in exercise of the powers conferred by Articles 22(2) and 144(6) of Regulation (EU) 2017/625 (“the Official Controls Regulation”).

Regulation (EU) 2016/2031 regarding pests of plants and the Official Controls Regulation amended as retained EU law (“the EU Regulations”) establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products (amongst other things). The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 and the equivalent Regulations that apply to England gave effect to the EU Regulations and provide for a corresponding enforcement regime.

The EU regulations and additional tertiary legislation made under them have been incorporated into domestic law in accordance with the European Union (Withdrawal) Act 2018, and amended in relation to Great Britain (“GB”) to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the European Union.

The Regulations are connected to Part 2 of the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021, elements of which apply to Wales. Those Regulations made provision to supplement the Official Controls Regulation. Specifically, they supplemented and modified the transitional derogations and modifications set out in Article 168 of, and Annex 6 to, the Official Controls Regulation, by providing for official controls that are carried out on certain goods listed in the Schedule to those Regulations to be carried out at the place of destination (“PoD”).

The purpose of these Regulations is to protect biosecurity and support trade between GB and relevant third countries by introducing measures for high-risk plant goods. They extend the enforcement provisions contained in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 to include inspections undertaken at PoDs, enabling official controls and other official activities relating to plant health rules to be enforced.

The Regulations facilitate the EU Exit phased plant health import control regime to support businesses after the end of the Transition Period, whilst also protecting GB biosecurity. They make amendments to allow high-risk plants and plant products to undergo plant health inspections away from the border at inland PoDs, because Border Control Posts are not expected to be operationally ready to cope with the increase in trade volumes until later this



year. This will be a temporary contingency measure until the Border Control Posts are operationally ready to inspect EU regulated goods.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The last paragraph of the Explanatory Note (“EN”) states that a Regulatory Impact Assessment (“RIA”) was not carried out in respect of the Regulations. However, section 6 of the Explanatory Memorandum (“EM”) is headed “Regulatory Impact Assessment (RIA)” and contains consideration of two options. Whilst there is no link to a wider RIA, it is assumed that section 6 of the EM constitutes a RIA in respect of the Regulations. As such, a person or organisation affected by the Regulations will be led to believe when reading the EN that no RIA has been conducted, and this potentially deprives them of the benefit of the additional information therein in planning for and complying with the changes implemented by the Regulations.

Welsh Government response

Merit Scrutiny point:

The point is accepted. Welsh Government officials made all efforts to consider costs and to include their consideration in the Explanatory Memorandum. The anomaly arose as officials did not consider those efforts to constitute a full RIA. As the Explanatory Note is not part of the Regulations, the Welsh Government will not seek to amend it.

Legal Advisers

Legislation, Justice and Constitution Committee

17 March 2021





Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee