

Explanatory Memorandum to The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group and is laid before Senedd Cymru 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 etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2024.

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.

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies MS
Cabinet Secretary for Climate Change and Rural Affairs
16 April 2024

PART 1

1. Description

The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2024 ('this instrument') is made under powers conferred by the European Union (Withdrawal) Act 2018 ('the Withdrawal Act') to amend legislation in the field of plant health and tree health fees.

The instrument makes amendments to the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 which apply in relation to Wales. It aligns fees for plants and plant products with the frequency of checks changes occurring Great Britain-wide following implementation of the Borders Target Operating Model (TOM). The instrument will also amend fees associated with documentary checks as a result to the amendment of identity and physical checks.

The changes to the frequency of checks and introduction of risk-based import checks on medium-risk goods from EU member states, Liechtenstein, and Switzerland, from 30 April 2024 are being delivered by the Plant Health (Fees) (England) and Official Controls (Plant Health) (Frequency of Checks) (Amendment) Regulations 2024.

The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2024 will also correct an error to the Plant Health etc. (Fees) (Wales) Regulations 2018 made in Schedule 1 of the Plant Health etc. (Fees) (Amendment) (Wales) (EU Exit) (No. 2) Regulations 2022 where multiple fees were being charged for mixed consignments. The policy intention was to include all categories of plants for planting under one category, however the legislation resulted in fees being charged incorrectly and by category rather than a consignment. The amendment will ensure all categories of plants for planting fall under one category, this will ensure only one flat rate fee is applied to consignments consisting of plants for planting.

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

Further consideration has been given to the Committee's report ([SL\(6\)463](#)), and the instrument has been revised and re-laid.

The instrument was corrected so that:

- In the new Schedule 1 in the final entry in column 2 for "Pyrus", the country "De Affrica" is included, so the text ends "Liechtenstein, De Affrica neu'r Swistir".
- In regulation 3 the reference to the heading of Schedule 1 is amended to "(fees for inspections in connection with a plant passport authority)".
- The new Schedule 2B shoulder note refers to "Regulation 3(2)(a) and (b)".

3. Legislative background

The instrument relates to the withdrawal of the United Kingdom from the European Union. It is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 7 of Schedule 4 of the Withdrawal Act which gives the Welsh Ministers power to modify pre-exit fees and charges. In accordance with paragraphs 21 and 1(8) of Schedule 7 the exercise of this power by Welsh Ministers is subject to the affirmative procedure.

This instrument is subject to the draft affirmative procedure. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

The instrument will make amendments to the Plant Health etc. (Fees) (Wales) Regulations 2018 and the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 which apply in relation to Wales. It aligns fees for plants and products with the frequency of checks changes occurring GB-wide following implementation of the Borders Target Operating Model, as well as making a correction to a previous instrument.

4. Purpose and intended effect of the legislation

The purpose of this instrument is to introduce fees for the implementation of the second milestone of the Border Target Operating Model, that comes into effect by 30 April 2024, to protect biosecurity and support trade between Great Britain and third countries.

Changes are being made to Plant Health etc. (Fees) (Wales) Regulations 2018 to ensure that the fees charged for checks on goods imported into Wales reflect the established frequencies of checks.

Additionally, an error in the Plant Health etc. (Fees) (Wales) Regulations 2018 made in Schedule 1 of the Plant Health etc. (Fees) (Amendment) (Wales) (EU Exit) (No. 2) Regulations are corrected.

Scotland and England plan to make parallel legislation, which will have the same effect in their territories.

A separate instrument - the Plant Health (Fees) (England) and Official Controls (Plant Health) (Frequency of Checks) (Amendment) Regulations 2024 - is being laid in UK Parliament on 4 March 2024. It will make amendments to Regulation (EU) 2017/625 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 (“the Official Controls Regulation”) and the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739). It will introduce risk-based import checks for certain goods imported from EU member states, Liechtenstein and Switzerland from 30 April 2024.

What did any relevant EU law do before exit day?

Regulation (EU) 2016/2031 on protective measures against pests of plants, and Regulation (EU) 2017/625 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), establish controls and restrictions which apply to the import and internal movement of certain plants, plants pests and other material. The purpose of these Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests.

Article 79 of Regulation (EU) 2017/625 requires the charging of fees for certain official controls, including plant health checks on certain regulated imported consignments. The 2018 Regulations (as amended) specify fees payable to the Welsh Ministers in relation to plant health services, including import inspection services, provided in Wales.

Annex 6 to Regulation (EU) 2017/625 provides the meaning of the transitional staging period.

The Plant Health (Fees) (Forestry) (Wales) Regulations 2019 implement Article 13d of Council Directive [2000/29/EC](#) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.

Why is it being changed?

Under existing legislation, plant health checks are carried out on high-priority (also known as high risk) consignments of imported plants, plant products and other objects imported into GB from EU member States, Liechtenstein, and Switzerland, and on regulated goods imported from all other third countries, on a risk-basis. GB Plant Health Services carry out these inspections to prevent the introduction and spread of organisms harmful to plants or plant products. GB Plant Health Services collect fees for inspections.

The legislation is being amended to ensure that goods which pose a medium risk to GB biosecurity are subject to equivalent fees to the import controls, in line with the Border Target Operating Model. These fees will not be introduced for “relevant ports”.

The instrument also makes an amendment in the Plant Health etc. (Fees) (Wales) Regulations 2018 to correct the type of inspection for which a fee is chargeable under those Regulations.

An amendment is also being made to the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 to remove wording incorrectly included in relation to certain inspections.

The amendments ensure consistency and alignment with England and Scotland, where equivalent amendments are being made.

What will it now do?

Equivalent fees for import checks not at “relevant ports” will be introduced on medium-risk goods from EU member states, Liechtenstein, and Switzerland, from 30 April 2024.

The instrument will also correct an error to the Plant Health etc. (Fees) (Wales) Regulations 2018 where multiple fees were being charged for mixed consignments. The amendment will ensure only one flat rate fee is applied to consignments consisting of plants for planting. An amendment is also being made to the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 to remove wording incorrectly included in relation to certain inspections.

The amendments ensure consistency and alignment with England and Scotland, where equivalent amendments are being made.

5. Consultation

UK Government, in collaboration with the Welsh and Scottish Governments, have carried out targeted stakeholder engagement on the proposal to introduce import checks and fees on medium risk goods from the EU, Liechtenstein, and Switzerland. Engagement was aimed at plant health stakeholders, including trade associations and their members, primarily affected by this instrument as they represent businesses which import the majority of goods which require plant health checks and fees. The comment period was open for 10 weeks.

The respondents were generally supportive of the proposal. The summary of the responses and the Government’s response to these was published on gov.uk [here](#).

6. Regulatory Impact Assessment (RIA)

Please Note:

A Regulatory Impact Assessment has been undertaken in relation to Regulation 2 of this instrument.

PART 2 – REGULATORY IMPACT ASSESSMENT

Two options have been considered in this Regulatory Impact Assessment. These are:

- 1) Do not make the legislation (do nothing)
- 2) Make the legislation (to maintain the status quo)

6.1 Costs and benefits

Option 1 – Do not make the legislation.

Under this option, plant health fees would not be extended to include risk-based levels of documentary checks on medium risk plants and plant products from the EU, Liechtenstein and Switzerland or introduced for physical and identity checks on goods. This would mean the Animal and Plant Health Agency (APHA) and the Forestry Commission, who undertake the inspections and recover costs via fees on behalf of the Competent Authority (Welsh Ministers in Wales), would not be able to recover the costs incurred of export certification and inspections associated with border documentary checks and physical and identity checks in Wales. These checks are critical to plant biosecurity. Wales would then be disadvantaged and less prepared for pest and disease outbreaks.

Costs

No additional costs have been identified for this option. Whilst ideally Wales would be self-sufficient to cover the inspection required, this is not achievable. Therefore, Wales are reliant on the Forestry Commission and APHA to carry out these inspections on Welsh Ministers behalf on a cost recovery basis. The budget for border inspections of plants and plant products in Wales is held by the UK Government's Department for Environment, Farming and Rural Affairs (Defra). If the new fees regime is not introduced there is a risk the revenue generated from fees would be insufficient to cover the cost of the service provided by the Forestry Commission and APHA, with the Welsh Government having to work with Defra, as the budget holder, to determine how to meet any shortfall.

Additionally, without the regulations coming into force there would also be inconsistency between the fees regime in Wales and England, meaning potential additional logistical costs for businesses and traders, as well as APHA and Forestry Commission, in Wales.

Benefits

No benefits have been identified with this option. Although there are costs to importing plant products, these are necessary to protect the nation against plant pest and diseases by ensuring the viability of the inspecting bodies (APHA and Forestry Commission).

Option 2 – Make the legislation.

Under this option, plant health fees would be extended to include risk-based levels of documentary checks on medium risk plants and plant products from the EU, Liechtenstein and Switzerland or introduced for physical and identity checks on goods. This is to enable a fees regime for checks following the implementation of the Borders Target Operating Model (TOM). This would bring the Welsh fees regime in line with England and Scotland. This would ensure the inspections regime in Wales continues to be financially viable for APHA and Forestry Commission without the requirement of extra financial support from Defra and the Welsh Government. Ultimately, this enables Wales to continue to

uphold a strong biosecurity regime at the border contributing to a biosecure Wales and wider UK.

Costs

A fees regime for checks at the border is an established principle and is already in place for plants and plant products from the Rest of the World and high-risk plants and plant products.

The Regulations are expected to impose additional ongoing costs on businesses which import specific plants and plant products from the EU, Liechtenstein and Switzerland following the implementation of the full TOM on April 30, and West coast ports later (31 October 2024 at the earliest). This cost will be in the form of a fee paid for plant health checks carried out at a Border Control Post or a Control Point. The fee will vary according to the type of product and the frequency with which checks are required. The fees have been set to enable the Forestry Commission and APHA to operate on a full cost-recovery basis.

Businesses may also face a transitional cost for familiarising themselves with the new fee schedules. However, this is expected to form a small part of the broader familiarisation cost associated with the TOM.

The extent to which each business absorbs these additional costs or seeks to pass them on to their customers (in the form of higher prices) is likely to depend on individual business models and levels of competition in the local area.

As the TOM is a new policy being implemented in 2024, figures surrounding the number of businesses importing plants and plant products into Wales and the volume and frequency of imports is uncertain. Once the TOM is implemented, the UK will have increased data to be able to review this position in future plant health fees legislation.

Some data¹ is available on how many plant products are imported to GB on an annual basis. However, this data is not disaggregated further, so it is not possible to set out the value of material imported into Wales specifically. That said, the value of trade in plants and plant commodities stood at £18.8 billion in 2022 whilst the corresponding net mass was 22.7 million tonnes. Of this, approximately £11.3 billion is imported from the EU. The majority of these imports are believed to be through ports in South-East England. As a best estimate, up to 2% of imports from the EU are believed to be through Wales, with a value of up to £226m.

It is estimated that plants have a total annual value to the UK of £15.7 billion per year², comprising the economic, environmental and social benefits our plants and trees provide. Based on land area relative to the UK, the total

¹ [Plant Health – international trade and controlled consignments, 2018-2022 – experimental statistics publication - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/plant-health-international-trade-and-controlled-consignments-2018-2022-experimental-statistics-publication)

² [Plant biosecurity strategy for Great Britain \(2023 to 2028\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/plant-biosecurity-strategy-for-great-britain-2023-to-2028)

annual value of plants and treescape in Wales would be approximately £1.3 billion.

In 2022, there were 479,000 consignments of controlled material-controlled commodities were notified to APHA across England and Wales.

Benefits

As outlined above, the new fees regime will reflect the cost to the Forestry Commission and APHA of undertaking the relevant plant health checks and the frequency with which those checks are required for the implementation of the TOM. The fees have been set on a full cost-recovery basis and should help ensure the cost of the checks is met by the importer and not the taxpayer.

GB imports approximately 18.6 million tonnes of plant products globally each year, specifically from the EU this is valued at £7.91 billion per year (although following EU Exit this figure may increase). Continuing to enable the inspections of plant products contributes to a nation protected against plant diseases and increased biosecurity. For example, recent figures suggest an £80 million loss of potatoes if there is a Colorado Beetle outbreak. These inspections will also help ensure businesses have biosecure plants on their premises and ready to sell onwards. This sense of security will allow businesses to have confidence in their products which will not affect their other products currently stored at facilities such as plant nurseries.

Further, as identical fees are being introduced in England and Scotland, it means the legislative landscape will be consistent across GB. This will make it simpler and easier for businesses operating in GB, it also ensures Welsh business are not at a disadvantage compared to their English and Scottish counterparts.

This option, therefore, mitigates the risk of entry of plant pest and diseases across GB, benefiting businesses and provide robust controls to protect the UK's biosecurity.

Integrated Impact Assessment

An integrated impact assessment has not been completed for these Regulations.

Consultation

UK Government, in collaboration with the Welsh and Scottish Governments, have carried out targeted stakeholder engagement on the proposal to introduce import checks and fees on medium risk goods from the EU, Liechtenstein, and Switzerland. Engagement was aimed at plant health stakeholders, including trade associations and their members, primarily affected by this instrument as they represent businesses which import the majority of goods which require plant health checks and fees. The comment period was open for 10 weeks.

The respondents were generally supportive of the proposal. The summary of the responses and the Government's response to these was published on gov.uk [here](#).

Conclusion

Option 2 is the recommended option. This option maintains the status quo, enabling Welsh businesses to continue to import biosecure plant products from the EU. An increase in costs has been identified for this option which may lead to an increase in costs for growers and consumers but the benefits of a biosecure GB outweigh this. Additionally, option 2 ensures a consistent fees regime across GB, preventing any unnecessary confusion or burden to Welsh businesses and traders, as well as inspectors in APHA and Forestry Commission.

6.2 Competition Assessment

The competition filter assessment has been undertaken as follows:

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

No competition concerns have been identified.

6.3 Post implementation review

Plant health fees are subject to an annual review, at this time more data will be available on the import of plant goods which can be used to further elucidate the impact of an increase in fees.

Annex
Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that 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 requirements	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 Standing Order 27.1A	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriateness	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	A statement that the SI does no more than is appropriate.

		statement when exercising powers in Schedule 2	
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 when exercising powers in Schedule 2	<p>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.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
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	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

		have committed to make the same statement when exercising powers in Schedule 2	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	A statement to explain why it is appropriate to create such a sub-delegated power.

		create a legislative power exercisable not by a Minister of the Crown or a Devolved 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 that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

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

1. Appropriateness statement

The Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca-Davies, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2024”.

This is the case because this instrument makes changes to ensure that the current policy for fees for inspections of plants and plant products is maintained.

2. Good reasons

The Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca-Davies, 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; the fees will reflect the cost to the Forestry Commission and APHA of undertaking the relevant plant health checks and the frequency with which those checks are required for the implementation of the TOM. The fees have been set on a full cost-recovery basis and should help ensure the cost of the checks is met by the importer and not the taxpayer.

3. Equalities

The Cabinet Secretary for Climate Change and Rural Affairs, Huw Irranca-Davies, has made the following statement(s):

“The draft instrument does 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 Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

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