

## **Explanatory Memorandum to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021**

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd 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 Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021. I am satisfied the benefits justify the likely costs.

Lesley Griffiths MS

**Minister for Environment, Energy and Rural Affairs**

15 March 2021

# Part 1

## 1. Description

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021 (the “instrument”) will make amendments to the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 which apply in relation to Wales.

This instrument will come into force on 8 April 2021.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by Articles 22(2) and 144(6) of Regulation (EU) 2017/625 of the European Parliament and of the Council 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”). Please see Article 3(2A) for the definition of “the appropriate authority”.

This instrument is subject to the negative procedure.

## 3. Legislative background

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.

This instrument is 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”).

#### **4. Purpose and intended effect of the legislation**

The purpose of this instrument is to protect biosecurity and support trade between GB and relevant third countries by introducing measures for high-risk plant goods. This instrument extends 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.

#### **What the instrument does**

This instrument facilitates the EU Exit phased plant health import control regime to support businesses after the end of the Transition Period, whilst also protecting GB biosecurity. It makes 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.

#### **5. Consultation**

The powers used to make this instrument engage a consultation requirement in Article 144 of the Official Controls Regulation. Early informal engagement conducted by the UK Government with GB stakeholders, to test the feasibility of the new process against business practices covering a range of import issues, indicated that stakeholders would be open to having checks done at PoDs for flexibility sake. In addition, the UK Government engaged with GB-wide stakeholders and trade from summer 2020 to January 2021, including feasibility testing sessions as the PoD scheme was being developed.

The Welsh Government did not seek to duplicate this consultation which we fed into or unnecessarily burden stakeholders, but we did conduct a consultation (regarding the proposal to amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 to enable inspections to be undertaken at PoDs on high risk plants and plant products). This ensured Welsh specific stakeholders were given an opportunity to raise any Wales specific issues. The stakeholders consulted included the Horticultural Trades Association, Grow Wales/Tyfu Cymru, the

Fresh Produce Consortium and NFU. One response was received (from Grow Wales /Tyfu Cymru) and it was supportive of the proposal.

## 6. Regulatory Impact Assessment (RIA)

Two options have been considered in this assessment:

- Option 1 - Do Nothing
- Option 2 - Amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 as described above.

### Costs and benefits

#### Option 1 – Do Nothing

This is the baseline option and as such there are no additional costs or benefits associated with this option.

#### **Option 2 - Amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 as described above.**

The regulations are expected to have very minor financial implications. There are 74 plant health import/export businesses in Wales which could potentially be affected by these regulations. It has been estimated that it will cost each PoD £80 to purchase the additional kit required for the inspection. There is a further cost to businesses of approximately £3 per inspection which reflects the value of time spent during the inspection. The PoD scheme is voluntary in that businesses will be able to continue to use the Border Control Posts if they prefer, however, guidance will encourage them to use the PoD scheme where possible, as there is a risk that the existing BCPs and controls points will not have the capacity to facilitate these checks at the border.

The costs to the organisations responsible for undertaking the plant health inspections are expected to be similarly small. Defra have estimated that the cost to the Animal Plant and Health Agency (APHA – for England and Wales), Forestry Commission for the forestry sector, and SASA in Scotland is under £100,000 for the six months the PoD scheme is expected to be operational. Given the relative size of the market in Wales, it is estimated the cost here will be less than £10,000.

As noted above, Border Control Posts are not expected to be operationally ready to handle the increase in trade volumes (following the end of the transition period) until later this year. The Regulations are

intended to ensure that businesses which are involved in the import of plants and plant products can continue to operate efficiently, whilst maintaining an effective plant health inspection regime and protecting biosecurity in Wales and across GB.

This is the preferred option.

### **Competition Assessment**

The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.