

SL(6)421 – The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023

Background and Purpose

These Regulations amend the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (“the 2019 Regulations”) and the Plant Health etc. (Fees) (Wales) Regulations 2018 (“the 2018 Regulations”). The amendments modify the relevant date for payment of fees payable to the Welsh Ministers under the 2018 Regulations and the 2019 Regulations.

Regulation 2 amends the 2018 Regulations by extending the duration of an exemption from the payment of fees otherwise payable in respect of certification and pre-export services on phytosanitary consignments in certain circumstances. The exemption ceases to have effect at the end of 30 June 2025.

Regulation 3 amends the 2019 Regulations by providing an exemption from the payment of fees otherwise payable in respect of applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) in certain circumstances. The exemption ceases to have effect at the end of 30 June 2025.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of these Regulations before the Senedd. The Welsh Ministers cannot make these Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

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

Merits Scrutiny

The following 2 points are 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.**

These Regulations were initially laid on 7 November 2023 and the Committee considered the Regulations on 20 November. The Welsh Government response was received on 20 November.

The Committee’s report identified four reporting points. The Committee decided to write to the Minister for Rural Affairs and North Wales and Trefnydd (“the Minister”) as it considered further information and clarification was required in relation to two of the reporting points.



One of the technical reporting points asked how the Welsh Government considered that substituting the date in regulation 3(5D) would revive regulation 3(5C) of the 2019 Regulations as it ceased to have effect on 31 December 2022.

The Government response received on 20 November stated the following:

Regulation 3(5C) has never been revoked, but has had (until these Regulations) no legal effect since 1st January 2023. 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).

The letter to the Minister said that the Committee considered that the words "Paragraph (5C) ceases to have effect" amounted to a revocation on the specified date, even if the word "revoked" had not been expressly used. The letter asked for further information to clarify why the Welsh Government did not consider it necessary to expressly re-state paragraph (5C) of regulation 3 of the 2019 Regulations.

The Minister replied in a letter dated 27 November, stating that:

I am grateful to the Committee for their careful consideration of these Regulations. I agree it is important the Regulations are clear, accessible and operable. To this end, I have decided to withdraw these Regulations ahead of their scheduled debate on 28 November 2023.

I intend to lay revised Regulations to achieve the same policy intent. These Regulations will also still seek to extend or apply the Movement Assistance Scheme but will address the specific points raised by the Committee.

In particular, the new Regulations will provide clarity that regulations 3(5C) and 3(5D) no longer operate in law, and restate the provisions as new sections 3(5E) and 3(5F)

These revised Regulations restate the provisions concerned as new paragraphs (5E) and (5F) of regulation 3 of the 2019 Regulations, as indicated in the Minister's letter.

The second point raised with the Minister concerned the third reporting point stating that there appeared to be inconsistencies between the Explanatory Note and the effect of the amendments made by these Regulations. The Welsh Government response stated 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.

Whilst the Committee acknowledged that explanatory notes do not form part of regulations it asked for the Minister's views on whether an explanatory note which contains information that is inconsistent with the corresponding regulations could adversely affect the accessibility of the law.



Whilst this point was not directly addressed, the Explanatory Note to the revised Regulations has been amended.

2. 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 fee exemption provided for by the 2019 Regulations incorrectly ended on 31 December 2022 and as such regulation 3(5C) ceased to have effect. These Regulations insert a new paragraph (5E) into regulation 3 which extends the fee exemption. New paragraph (5F) states that paragraph (5E) ceases to have effect at the end of 30 June 2025.

The effect is that between 1 January 2023 and the date on which these Regulations come into force, 30 December 2023, no fee exemption will have been in force. However the Minister noted the following in her letter of 27 November 2023:

As a result of this amendment, the new draft regulations will not seek to make retrospective provision in relation to Regulation 3(5C) of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019. This means there will be no retrospective exemption from fees for certain movements of wood, wood products, isolated bark or used forestry machinery. Instead, the relevant fee exemption will now be in place from 1 January 2024 until 30 June 2025. Regrettably, this means there will be no fee exemption in place for certain movements of certain regulated material for 2023 due to the provision not being extended previously. However, as previously communicated, the potential for businesses to be adversely affected by this is considered to be low-risk.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

7 December 2023



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—
Welsh Parliament
Legislation, Justice and Constitution Committee