

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (PLANT HEALTH) (FREQUENCY OF CHECKS)
REGULATIONS 2022

2022 No. 739

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food, and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to introduce the new Official Controls (Plant Health) (Frequency of checks) Regulations 2022. These Regulations make provision for the appropriate authority to determine the frequency rates of physical checks and identity checks (together “plant health checks”) of consignments of certain plants, plant products and other objects entering Great Britain (GB) from a third country, including for the modification of those frequency rates.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, and Scotland.
4.2 The territorial application of this instrument is England and Wales, and Scotland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Retained regulation (EU) 2016/2031 (“the Plant Health Regulation”) on protective measures against pests of plants and retained regulation (EU) 2017/625 (“the Official Controls Regulation”) 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 (together “the GB Regulations”) establish controls and restrictions which apply to the import and internal movement of certain plants, plants pests and other material. The purpose of the GB Regulations is to help reduce biosecurity risk and protect the environment from the spread of harmful pests.
- 6.2 Article 54 (2) of the Official Controls Regulation requires certain commodities which are imported into GB from a third country to be subject to a frequency of plant health checks dependent on the risk posed by each commodity or category of commodity to human, animal or plant health or animal welfare. Article 54 (3) further provides for regulations to be made to establish the criteria and the procedures for determining and

modifying the frequency rates of plant health checks to be performed on consignments and to adjust them to the level of risk associated with those consignments.

- 6.3 This instrument also revokes Part 6 of the Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021⁽¹⁾ in order to ensure the operability of the new Official Controls (Plant Health) (Frequency of checks) Regulations 2022 introduced in this instrument.

7. Policy background

What is being done and why?

- 7.1 GB Plant Health Services carry out inspections (documentary, identity and physical) on consignments of imported plants, plant products and other objects to prevent the introduction and spread of organisms harmful to plants or plant products.
- 7.2 The plant health checks are carried out on high-priority (also known as high risk) commodities imported into GB from EU member States, Switzerland and Liechtenstein and on regulated commodities imported from all other third countries, on a risk-basis. The highest risk import trade pathways (i.e. a commodity type from a specific country) are subject to 100% documentary, identity and physical checks.
- 7.3 Following the UK's exit from the EU it is appropriate that the frequency of checks for goods from all third countries reflect the risk to GB rather than the EU. The new GB focused risk-based methods aim to ensure that impacts from plant health checks are kept at a level appropriate to the degree of risk posed by different categories of commodities and that its phytosanitary regime remains appropriate to address the biosecurity risks which GB faces.
- 7.4 This instrument makes provisions for a GB focused risk-based frequency of checks regime, allowing the modification of the frequency of plant health checks on specific import trade pathways, depending on the level of plant health risk posed to GB. This instrument will apply equally to imports from non-EU countries and high-priority goods from EU member States, Switzerland, and Liechtenstein.
- 7.5 The frequency rates of plant health checks under the GB risk-based inspection regime will be reviewed annually. Changes to the frequency of checks for commodities will be determined based on new or revised risk assessments, pest interceptions, changes in pest distributions, or other developments. However, the frequency of checks may be temporarily increased at any time if the competent authority considers it necessary following a risk assessment, information collected by the authority or outcome of any phytosanitary controls in accordance with Article 120(1) of the Official Controls Regulation. Once this no longer justifies the increased frequency, the authority will reduce the frequency rates of plant health checks to the rates determined under the instrument.
- 7.6 From July 2022 the Plant Health etc. (Miscellaneous Fees) (Amendment) (England) Regulations 2022, and similar legislation for devolved administrations, will come into force. This will ensure that fees charged for plant health checks on commodities imported into GB correspond to the new GB focused risk-targeted inspection scheme established in this instrument.

(1) S.I. 2021/426.

7.7 Secondly, this instrument revokes Part 6 of the Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021(2) (S.I. 2021/426) to remove the existing frequencies of checks on the high-risk goods from EU member States, Switzerland and Liechtenstein so they are replaced by the frequency rates determined in accordance with this instrument.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is not a consolidation instrument.

10. Consultation outcome

10.1 Targeted stakeholder engagement was carried out on proposals to establish a risk-based inspection system in GB. The eleven respondents (which included responses from trade associations) were generally supportive of a GB focused risk-based frequency of checks regime. A consultation targeted at plant health stakeholders, including trade associations and their members, was appropriate in this case. We targeted stakeholders primarily affected by this instrument as they represent businesses which import the majority of commodities which require plant health checks. The consultation was open for 7 weeks.

10.2 The summary of responses and Government's response to the consultation on a method for determining the frequency of risk-targeted plant health import inspections to GB was published on gov.uk at [Freq-of-checks-Gov-Response.pdf \(defra.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92444/Freq-of-checks-Gov-Response.pdf).

10.3 The Scottish and Welsh Devolved Administrations have been consulted and have provided appropriate consent to lay the proposed instrument which extends to England and Wales, and Scotland.

11. Guidance

11.1 The main stakeholders affected have been informed of the changes and information on the frequencies of consignment checks has been placed on the UK Plant Health Portal.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that it would reduce the level of plant health checks for businesses that import regulated material of lower plant health risk. Businesses will benefit from reduced costs from delays due to inspections, however there will be some costs to businesses associated with the two commodities where the frequency checks are increasing. The impact of these benefits and costs have been considered to be minimal to businesses. The actual cost to businesses will vary depending on how they organise their imports, inspection checks other than by the GB Plant Health Services and the commodities they import.

12.2 The impact on the public sector is that it would allow a different frequency of checks on regulated material, depending on the risk to GB biosecurity. This means plant

(2) S.I. 2021/426.

health inspection resources could be used more efficiently and this is estimated to bring small savings to the public sector.

- 12.3 A full Impact Assessment has not been prepared for this instrument because it is expected to have a low level of impact to business. This instrument will have a less than £5m impact on industry.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This instrument applies equally to all businesses importing regulated plant goods, given the importance of protecting plant biosecurity through the actions of all businesses, regardless of their size. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

- 14.1 The review of the frequency rates of inspection checks is stated in paragraph 7.5.
- 14.2 This instrument does not include a statutory review clause and the measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions or other developments.

15. Contact

- 15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs, Telephone: 02085 654 319 or email: kate.somerwill-owens@defra.gov.uk, can be contacted with any queries regarding this instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Parliamentary Under Secretary of State for Rural Affairs, Access to Nature and Biosecurity can confirm that this Explanatory Memorandum meets the required standard.