

Explanatory Memorandum to The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales 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 Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

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.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
6 February 2019

1 PART 1

1. Description

- 1.1 This instrument makes amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017. It addresses deficiencies in domestic legislation on the marketing of seeds and fruit plant and propagating material arising from the withdrawal of the United Kingdom from the European Union so that such will continue to be operable after EU exit.
- 1.2 This instrument comes into force on “exit day”, which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the “2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 2.2 It also (in exercise of the powers conferred by the European Communities Act 1972 (c.68)) makes amendments to the Seed Marketing Regulations (Wales) 2012 to include references to EEA states and Switzerland where appropriate.
- 2.3 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

3. Legislative background

- 3.1 This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1 The marketing of seed and plant propagating material is regulated at Community level by EU Directive. The directives prescribe processes to ensure minimum quality standards and traceability. The directives also set out administrative provisions (including, where appropriate, provision for fees), impose record-keeping requirements and provide for the licensing of crop inspectors, seed samplers and seed testing stations.
- 4.2 This instrument makes amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.
- 4.3 The Seed Marketing Regulations (Wales) 2012 implement;
- Council Directive 66/401/EEC on the marketing of fodder plant seed
 - Council Directive 66/402/EEC on the marketing of cereal seed
 - Council Directive 2002/54/EC on the marketing of beet seed
 - Council Directive 2002/55/EC on the marketing of vegetable seed
 - Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants
 - Commission Directive 2009/74/EC amending Council Directives 66/401/EEC, 66/402/EEC, 2002/55/EC and 2002/57/EC as regards the botanical names of plants, the scientific names of other organisms and certain Annexes to Directives 66/401/EEC, 66/402/EEC and 2002/57/EC in the light of developments of scientific and technical knowledge
 - Commission Directive 2010/60/EU providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment
 - Commission Decision 2011/180/EU implementing Council Directive 2002/55/EC as regards conditions under which the placing on the market of small packages of mixtures of standard seed of different vegetable varieties belonging to the same species may be authorised
 - Commission Directive 2008/62/EC providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties; and
 - Commission Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.
- 4.4 To comply with the Seed Marketing Regulations, and in order to market the main varieties of agricultural crops or vegetables in Wales, a person must hold a licence to market seed and have successfully applied to have seed certified to show the seed meets EU quality standards. A person is considered to be marketing seed if they are holding or keeping them before sale; offering them for sale e.g.: by advertising; giving them to someone else; packing, sealing or labelling seed; processing seed; or collecting and preparing preservation mixtures of seed.
- 4.5 The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 implement;

- Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production
 - Commission Directive 93/48/EEC setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC
 - Commission Directive 93/79/EEC setting out additional implementing provisions for lists of varieties of fruit plant propagating material and fruit plants, as kept by suppliers under Council Directive 92/34/EEC
- 4.6 The Regulations set quality standards to be met by certain genera and species of fruit plant material when marketed and prescribe conditions to be satisfied by suppliers of fruit plant material. Suppliers may not market plant material unless it is substantially free on visual inspection from harmful organisms and diseases and unless it satisfies minimum quality requirements. Producers are required to take certain measures if such organisms and diseases are found. Fruit plant material must be marketed with reference to the variety to which it belongs or, in the case of rootstocks which do not belong to a variety, to the appropriate species or interspecific hybrid.

Why is it being changed?

- 4.7 This instrument amends provisions in The Seed Marketing (Wales) Regulations 2012 and The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 which are inappropriate or redundant as a result of the withdrawal of the UK from the EU and makes appropriate changes to these regulations to ensure that the law functions correctly after exit.

What will it now do?

- 4.8 The changes made by this instrument are necessary to ensure that current legislation for seed marketing and fruit propagating material continues to operate effectively after the UK leaves the EU in a “no deal” scenario. The amendments do not amount to changes in policy and will not have a substantive impact on current marketing practices or standards. The instrument remedies deficiencies that will arise in domestic marketing legislation for example by removing references to the Commission, Community and Member States, replacing references to “third countries” and removing reporting obligations to the Commission.
- 4.9 In order to guarantee supplies of seed on which the UK is currently dependent, the instrument provides for a temporary two year period during which time supplies of certified seed from a European Single Market State may continue to be marketed in the UK. To avoid financial loss to UK seed merchants, the instrument also provides a temporary

two year interim period to allow existing stocks of pre-printed EU certification labels to be used up.

- 4.10 This instrument amends the Seeds Marketing Regulations 2011 using powers under section 2(2) of the European Communities Act to include references to the European Economic Area States and Switzerland were appropriate.
- 4.11 Three other EU Exit SIs have been produced in the field of plant varieties and seeds which apply on a UK, or GB, or England and Wales basis. These include;
- The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018. These Regulations make amendments to primary and secondary legislation in the field of plant variety rights (The Plant Varieties Act 1997, the Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998, the Plant Breeders' Rights Regulations 1998, the Plant Breeders' Rights (Information Notices) Regulations 1998 and the Plant Breeders' Rights (Naming and Fees) Regulations 2006).
 - The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018. These Regulations make amendments to retained and directly applicable EU implementing legislation on the marketing of plant propagating material. They also addresses deficiencies in the Seeds (National Lists of Varieties) Regulations 2001, as a result of EU exit.
 - The Marketing of Seed and Plant Propagating Material (Amendment etc.) (England and Wales) (EU Exit) Regulations 2018. These Regulations makes amendments to domestic legislation regulating the marketing of agricultural seed, forestry and vegetative propagating material. They amend the Marketing of Vegetable Plant Material Regulations 1995 and the Marketing of Ornamental Plant Propagating Material Regulations 1999 in relation to England and Wales and the Seeds Marketing Regulations, Marketing of Fruit Plant and Propagating Material and the Forest Reproductive Material (Great Britain) Regulations 2002 in relation to England.
- 4.12 Amendments to the Forest Reproductive Material (Great Britain) Regulations 2002 in relation to Wales will be made through a separate Wales only SI.

5. Consultation

- 5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative

and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

- 6.1 An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

8. Annex 1

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 requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	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 CLA Committee (as sifting committee)
Appropriate-ness	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 statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
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	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
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 have committed to make the same statement when exercising powers in Schedule 2	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 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 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
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. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how the Seed Marketing Regulations 2011 and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 operate.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all changes being made are solely in order to address deficiencies arising from EU Exit”.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, 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”. This is because the provisions ensure that protections provided by The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The 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.

- 4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the 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”.

- 4.3 Little or no impact on equalities is expected.

5. Explanations

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

6. Criminal offences

Not applicable / required.

7. Legislative sub-delegation

Not applicable / required.

8. Urgency

Not applicable / required.