

## **Explanatory Memorandum to the Seed Potatoes (Wales) (Amendment) (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 Seed Potatoes (Wales) (Amendment) (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**

5 March 2019

# **1 PART 1**

## **1. Description**

- 1.1 The Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019 amend the Seed Potatoes (Wales) Regulations 2016. They address deficiencies in domestic legislation on seed potatoes arising from the withdrawal of the United Kingdom from the European Union to make them operable after EU exit.

## **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 and to make associated provision.
- 2.2 This instrument is subject to the affirmative procedure in accordance with paragraph 1(9) of Schedule 7 to the 2018 Act.
- 2.3 Aside from regulations 3 and 4, this instrument comes into force on “exit day”. Section 20(1) of the European Union (Withdrawal) Act 2018 defines “exit day” as 29 March 2019 at 11.00pm. Regulations 3 and 4 come into force on the day one year after the day on which exit day falls.

## **3 Legislative background**

- 3.1 This instrument is being made using the power in paragraph 1(1) of Schedule 2 to and paragraph 21 of Schedule 7 to the 2018 Act 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 Council Directive 2002/56/EC prescribes marketing standards for seed potatoes to ensure minimum quality standards and traceability for marketed seed and propagating material.
- 4.2 Directive 2002/56/EC is implemented in Wales by The Seed Potatoes (Wales) Regulations 2016 (S.I. 2016/106 (W. 52)), which have been amended. Those Regulations control the production with a view to

marketing, the certification and the marketing of seed potatoes in Wales, other than those intended for export outside the European Union.

### ***Why is it being changed?***

- 4.3 The technical changes made by the instrument are necessary to ensure that the Seed Potatoes (Wales) Regulations 2016 continue to operate effectively and to ensure continuity of supply and marketing of seed potatoes from the EU and Switzerland for an interim period of one year after that withdrawal.

### ***What will it now do?***

- 4.4 This instrument will ensure that the Seed Potatoes (Wales) Regulations 2016 continue to operate effectively after we leave the EU. The instrument makes no policy changes other than those necessary to ensure such continued operation.
- 4.5 In the fields of the marketing of seed potatoes the changes made by this instrument include removing references to the Commission, Community and Member States, replacing references to “third countries” and removing reporting obligations to the Commission. To assure continuity in supplies of seed potatoes this instrument provides for a one year transitional period during which time EU seed potatoes and seed potatoes from Switzerland will continue to be recognised for production and marketing in Wales and, to avoid financial loss, permit a one year period for existing stocks of pre-printed official EU certification labels to be used up.
- 4.6 In the field of seed potatoes, further changes made by this instrument include a definition for Crown Dependencies (CDs) and a provision allowing the Welsh Ministers to recognise CDs legislation, where appropriate, as having equivalent effect to Wales marketing legislation to allow CDs access to the UK internal market.

## **5 Consultation**

- 5.1 As there is no substantive policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to continue to operate effectively after 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 technical changes necessary as a result of the UK’s withdrawal from the EU. A public consultation was not required because no substantive policy changes are being made via this statutory instrument. As this instrument relates to maintaining the substance of existing legislation after the withdrawal of the

UK from the EU, there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

- 6.2 The temporary period for accepting EU seed potatoes will constrain the impact on small businesses (employing up to 50 people). This instrument largely maintains the status quo insofar as that is possible after the UK's withdrawal from the EU and therefore does not introduce new duties or burdens on business.

# 7 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)
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 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 77	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 Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		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	
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 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 Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all changes being made are technical and do no more than is strictly necessary to ensure that the Regulations function correctly once the UK has left the EU.”

### 2. 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 Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.”

### 3. Equalities

- 3.1 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.

- 3.2 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”.

3.3 Little or no impact on equalities is expected.

#### **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.

#### **5. Criminal offences**

Not applicable / required.

#### **6. Legislative sub-delegation**

Not applicable / required.

#### **7. Urgency**

Not applicable / required.