

**Explanatory Memorandum to
The Seed Marketing (Wales) Regulations 2012**

This Explanatory Memorandum has been prepared by Sustainable Futures 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 Seed Marketing (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

John Griffiths

Minister for Environment and Sustainable Development

1 February 2012

1. Description

These Regulations consolidate the Welsh small seed marketing regulations and transpose the provisions of Commission Directive 2010/60/EU and Commission Decision 2011/180/EU.

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

The original small seed marketing regulations were made in English only following a policy decision at the time, based on the size of the text and the highly technical aspects of the statutory instruments. It is for the first time that the seed marketing regulations are being made in Welsh which means that a number of new Welsh language terms related to the technical aspects of seed production will be introduced.

3. Legislative background

These Regulations are made in exercise of powers under the Plant Varieties and Seeds Act 1964. Those powers are exercisable, in relation to Wales, by the Welsh Ministers.

The consolidation affects the following regulations which are being revoked: The Fodder Plant Seed (Wales) Regulations 2005, The Cereal Seed (Wales) Regulations 2005, The Beet Seed (Wales) Regulations 2005, The Oil and Fibre Plant Seed (Wales) Regulations 2004 and The Vegetable Seed (Wales) Regulations 2005.

The Seed (Registration, Licensing, Enforcement) (Wales) Regulations 2005 are also being revoked and regulatory details in relation to registration and licensing are included in the Seed Marketing (Wales) Regulations 2012.

This statutory instrument follows a negative resolution timetable.

4. Purpose & intended effect of the legislation

The purpose of these Regulations is to consolidate five largely horizontal seed marketing regulations and the related Seed Licensing and Enforcement (Wales) Regulations 2005 into a single instrument. The current regulations implement long standing Council Directives on the marketing of beet, fodder, cereal, oil and fibre plant and vegetable seed which prescribe minimum quality standards to ensure that purchasers receive seeds of a reasonable and uniform quality. The consolidation of the existing small seed marketing regulations into one overarching statutory instrument streamlines and modernises seed legislation. It consolidates approximately 500 pages of protracted and complicated regulations into a single statutory instrument (approximately 50 pages in length) through the use of horizontal provisions applicable to each of the crop groups and ambulatory reference to the technical standards in the parent marketing Directives.

These Regulations also give effect to the provisions of Commission Directive 2010/60/EU which introduces certain derogations for the marketing of fodder plant seed mixtures intended for the preservation of the natural environment. The collection and dispersal of wild meadow seed is a way to ensure the preservation of plant genetic resources which can enhance biodiversity in Wales. The Seed Marketing (Wales) Regulations 2012 lay down the rules in relation to the marketing conditions, quantitative restrictions and labelling of preservation mixtures.

The Seed Marketing (Wales) Regulations 2012 also transpose Commission Decision 2011/180/EU which allows for the marketing of small packets of vegetable seed mixtures of the same species.

Commission Directive 2010/60/EU and Commission Decision 2011/180/EU need to be transposed in all Member States. Failure to transpose in Wales could lead to infraction procedures being initiated against the UK.

5. Consultation

Consultation on the consolidation of the existing seed marketing regulations, with reference to the transposition of Commission Decision 2011/180/EU, was completed between 22 July and 9 September 2011. No responses were received on this consultation.

Consultation on Commission Directive 2010/60/EU with stakeholders in Wales was completed between 1 June and 16 July 2011. The two responses received viewed the implementation of the Directive as a positive development for Wales.

PART 2 – REGULATORY IMPACT ASSESSMENT

A. CONSOLIDATION OF THE EXISTING SEED MARKETING REGULATIONS

Option 1: Do nothing

The current seed marketing legislation in relation to small seeds is covered by six regulations and six additional amendments in Wales. Recent Directives and Decisions from the European Union require at least two more amendments to be made. This means that, currently, seed marketing regulations are complex and comprise of over 500 pages of regulatory text making it difficult for stakeholders to have a good overview and fully understand statutory requirements. In addition, the original seed marketing regulations were made in English only following a policy decision at the time, based on the size of the text and the highly technical aspects of the statutory instruments.

Option 2: Consolidate

While seed legislation is accurate and up to date in Wales (which would allow the Welsh Government to do nothing towards consolidation), the Welsh Government believes that it would be good practice to create one overall statutory instrument to ease the bureaucratic burden on industry. In line with

Better Regulation principles, the consolidation will allow for a single statutory instrument which is reduced in size, written in plain text and is easier to amend by placing technical data into an accompanying guidance rather than into the statutory text. In addition, the new consolidated instrument has been made in English and Welsh in accordance with the Welsh Government's policy on the use of Welsh language.

Costs & benefits

Option 1

There are no costs or benefits associated with this option.

Option 2

There are no significant costs associated with this option. Administrative costs for Welsh Government would be met from existing budgets. Option 2 is the preferred option because it streamlines seed legislation in Wales for the benefit of stakeholders and it also complies with current Welsh language policy of the Welsh Government.

Consultation

Open consultation on the issue was completed between 22 July and 9 September 2011. No responses were received. The highly technical nature of seed legislation means that it is aimed at a specialised sector which is relatively small in Wales.

Competition Assessment

A competition filter has been completed and this has indicated that the risk of a significant detrimental effect on competition is low.

B. TRANSPOSITION OF COMMISSION DIRECTIVE 2010/60/EU AND COMMISSION DECISION 2011/180/EU

Options

Option 1: Do nothing

The transposition of Commission Directive 2010/60/EU and Commission Decision 2011/180/EU are mandatory in all European Union Member States. The Welsh Government is bound by the Government of Wales Act 2006 to fully implement EU legislation into Welsh law. If transposition is not carried out it is likely that the United Kingdom would be fined by the European Union. The United Kingdom Government would require that the Welsh Government pay the full fine if it were the only Administration not to have complied with the transposition requirements.

Option 2

Transpose Commission Directive 2010/60/EU and Commission Decision 2011/180/EU

Commission Directive 2010/60/EU provides certain derogations for the marketing of fodder plant seed mixtures intended for the preservation of plant genetic resources. A preservation mixture is a mixture of ecotypes of regulated fodder species (e.g. ryegrass, fescues, clover and trefoil) with unregulated

species for recreating or restoring natural and semi-natural habitats, such as traditional hay meadows.

Commission Decision 2011/180/EU provides provisions for marketing of small packets of vegetable seed mixtures of the same species in European Union Member States.

Costs & benefits

Option 1

Risks associated with this option are high. If transposition is not carried out it is likely that the United Kingdom would be subject to infraction proceedings, and that the level of this fine would be likely to run to millions of pounds. The United Kingdom Government would require that the Welsh Government pay the full fine if it were the only Administration not to have completed transposition. Both Commission Directive 2010/60/EU and Commission Decision 2011/180/EU provide advantages for niche markets in the European Union and there are no benefits associated with non-transposition for the industry in Wales.

Option 2

Option 2 is the preferred option because option 1 does not comply with EU legislation. Full transposition of Commission Directive 2010/60/EU and Commission Decision 2011/180/EU will avoid potential infraction procedures being initiated against the Welsh Government for non-transposition. The administrative costs associated with the transposition process will be met from existing budgets.

There is a small cost for stakeholders associated with this option. Producers would be required to submit a sample of their seed for official testing (this would cost approximately £140). There would be no cost to producers in submitting the application. It is anticipated that there would be very few applications for the marketing of preservation mixtures as this is considered to be a niche market. Implementation of Directive 2010/60/EU will allow companies in Wales to collect and market wild seed mixtures (preservation mixtures) which will provide environmental benefits, in particular for the preservation of wild plant species and the natural landscape in Wales.

The implementation of Commission Decision 2011/180/EU will permit seed companies in Wales to market inter-varietal mixtures of standard vegetable seed in the same packet to provide amateur growers a greater consumer choice and a product that offers continuous cropping during the harvest period.

Consultation

Consultation on the provisions of Commission Directive 2010/60/EU was completed between 1 June and 16 July 2011. Stakeholders with potential interest in preservation mixtures were targeted during the consultation process. Responses to the consultation were received from Flora Locale and the Countryside Council for Wales. Both responses regarded the transposition of the preservation mixtures Directive as a positive improvement for Wales.

Competition Assessment

A competition filter has been completed and this has indicated that the risk of a significant detrimental effect on competition is low.

Post implementation review

The European Union reviews seed legislation on an on-going basis. It is expected that a post implementation review will take place after a period of no less than three years.