

Explanatory Memorandum to: The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Department for Energy, Planning 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 Seeds (Amendment etc.) (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

1 October 2019

PART 1

1. Description

1.1 This instrument makes related amendments to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019. These Regulations transpose EU legislation and correct operability issues that would arise after Exit.

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

2.1 Part 2 of this instrument is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972 while Part 3 of this instrument is made in exercise of powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Part 3 of this instrument comes into force immediately before “exit day”, which is defined as 31 October 2019 at 11.00 pm.

2.2 It was proposed that the instrument be subject to the negative procedure, as the instrument makes minor and technical changes and as such should be subject to annulment.

2.3 A sifting committee of the Constitutional and Legislative Affairs Committee considered this instrument on 16 September and subsequently recommended that the appropriate procedure for this instrument is the affirmative resolution procedure. A link to the CLA Committee’s report can be found at:

<http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=25904>

2.4 The central point of the Committee’s concern appeared to arise from their view that the instrument did not appropriately implement European law. The instrument amends the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 to restate the Welsh Ministers’ power to authorise the marketing of certain plant materials produced outside the EU and removes the time limit currently attached to the exercise of the power. The Committee’s view was that by not inserting the new time limit of 31 December 2022 the instrument did not appropriately implement European law “on the date the implementing legislation is made”.

2.5 The Minister for Environment, Energy and Rural Affairs has agreed for the instrument to be uplifted to the affirmative procedure. The Welsh Government’s view remains that the instrument appropriately implements European law. The removal of the current time limit for the Welsh Ministers to authorise the marketing of certain plant materials produced outside the EU will ensure the instrument appropriately

implements European law when it comes into force and, all things being equal, that it will continue to appropriately do so until 1 January 2023. The approach adopted is reasonable in light of the regularity of the European and domestic review of plant legislation.

3. Legislative background

3.1 Part 2 of this instrument is made in exercise of powers conferred by section 2(2) of the European Communities Act 1972. Part 3 of this instrument is made in exercise of powers conferred by paragraph 1(1) of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively due to the withdrawal of the United Kingdom from the European Union.

3.2 In accordance with the requirements of the 2018 Act, the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements set out in Part 2 of the Annex to this Explanatory Memorandum.

3.3 This instrument makes amendments which are legally necessary to achieve its objectives. It does not introduce changes of policy and its impact on business or the public is minimal.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 This instrument amends two pieces of domestic legislation:

- The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017; and
- The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019.

4.2 Council Directive 2008/90/EC (“the Fruit Directive”) prescribes marketing standards for fruit plant propagating material to ensure minimum quality standards and traceability. It allows each Member State to authorise in respect of its territory the marketing of planting material produced in countries outside the European Union which the Member State considers to have equivalent production standards. The Directive is transposed, in Wales, by the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.

Why is it being changed?

4.3 The Fruit Directive allows a Member State to authorise in respect of their territory the marketing of fruit plant material produced in countries outside the European Union which that Member State considers to have

equivalent production standards. The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 transposed this provision which was time limited. That limit has been extended by Commission Decision (EU) 2019/120. This instrument accommodates the extension of the EU timeframe relating to the Fruit Directive and makes exit deficiency amendments with regards to references to the European Union.

What will it now do?

- 4.4 This instrument will enable the Welsh Ministers to authorise the marketing, in Wales, of fruit plant and propagating material from any country outside of the EU if satisfied the plant material has been produced under conditions equivalent to those required in domestic legislation. The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 are amended to ensure that the amendment made by Part 2 of this instrument continues to operate effectively after the withdrawal of the United Kingdom from the European Union.

5 Consultation

- 5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is, in part, to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6 Guidance

- 6.1 There is no associated guidance in respect of this instrument.

7 Regulatory Impact Assessment (RIA)

- 7.1 The impact on business, charities or voluntary bodies is minimal.

8 Monitoring & review

- 8.1 The amendment made by Part 2 of this instrument will be kept under review.

Annex

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
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 committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
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,	Applies to Ministers of the Crown exercising	A statement to explain the instrument, identify the relevant

	Schedule 7	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	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 8(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. 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	A statement to explain why it is appropriate to create such a sub-delegated power.
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

- 1.1 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 Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 should be subject to a resolution of the National Assembly for Wales (i.e. the affirmative procedure)”. This follows on from a recommendation of a sifting committee of the Constitutional and Legislative Affairs Committee which considered this instrument on 16 September and subsequently recommended that the appropriate procedure for this instrument is the affirmative procedure. It should be noted that the changes being made by the instrument are technical in nature and introduce no policy changes to how the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 and The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 operate.

2. Appropriateness statement

- 2.1 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 Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because all the changes being made under the 2018 Act powers are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

- 3.1 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 made under the 2018 Act powers ensure that powers set out in domestic legislation continue to be fully 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 Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 do 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.”

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.