

Explanatory Memorandum to the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before the Senedd 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 2020.

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 MS

Minister for Environment, Energy and Rural Affairs

18 December 2020

Part 1

1. Description

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 (the “instrument”) will make amendments to subordinate legislation, which apply in relation to Wales, in relation to seeds, plants for planting and reproductive material.

This instrument applies to Wales and will come into force before implementation period (IP) completion day.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

The instrument is being laid under the “Made Affirmative procedure and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

There is a requirement under paragraph 4(a) of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State regarding any provisions that are due to come into force prior to IP completion. In accordance with this requirement, the Secretary of State has been consulted and a record of the process set out in a separate letter issued on 15 December 2020.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before IP completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK’s exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal 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

This instrument amends EU Exit legislation made in 2019. Since making those EU Exit SIs, a Withdrawal Agreement between the UK and the EU has been signed. It is necessary to update those earlier EU Exit SIs to ensure they function effectively at the end of the transition period. Amendments must also be made to reflect the Protocol and correct minor drafting errors in those earlier EU Exit SIs.

The purpose of the instrument is to ensure that legislation relating to plant propagating material and seeds remains operable at the end of the transition period.

5. What the instrument does

The instrument amends the Seed Potato (Wales) (Amendment) (EU Exit) Regulations 2019 and the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 and revokes elements of the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019.

The Seed Potato (Wales) (Amendment) (EU Exit) Regulations 2019 make amendments to the Seed Potatoes (Wales) Regulations 2016 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.

The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 include an amendment to the Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019. This instrument incorporates and revokes that amendment.

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 make amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017. They address deficiencies in domestic legislation on the marketing of seeds and fruit plant and propagating material arising from the withdrawal of the UK from the EU.

The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 include an amendment to the Marketing of Seeds and Plant Propagating Material

(Amendment) (Wales) (EU Exit) Regulations 2019 and this instrument replaces and revokes that amendment.

6. Consultation

This instrument makes amendments that are technical in nature and do not reflect a change of policy. As there is change of policy, no public consultation has been undertaken.

7. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to this instrument as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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
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 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	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. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
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 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		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

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs 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 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs 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”.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 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.”

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

“In relation to the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in section 4 (Purpose and 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

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 opinion, by reason of urgency, it is necessary to make the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020, without a draft of the Regulations being laid before, and approved by a resolution of the Senedd”.

This is because the Welsh Ministers have concluded that the ‘urgent made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument is in place before implementation period (IP) completion day.”

It is important to have this instrument in place before IP completion day to provide confidence and certainty to the public and business and to ensure the continued effective functioning of the statute book. If this instrument is not in force before IP completion day, the UK will not be able to meet its commitments and obligations under the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland, in relation to plant propagating material and seeds.

Using this procedure still allows for scrutiny and the Senedd will need to approve the Regulations for them to remain in force.