

Explanatory Memorandum to the Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2022

This Explanatory Memorandum has been prepared by the Landscapes, Nature and Forestry Division within the Department for Climate Change and Rural Affairs and is laid before Senedd Cymru 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 (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2022

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 Rural Affairs and North Wales, and Trefnydd
15 December 2022

PART 1

1. Description

These Regulations make corrections to the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022. These Regulations:

- Revoke and replace the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022.
- Resolve an inconsistency in the title and regulation 1 of the Welsh and English version of the Regulations so that both the English and Welsh titles refer to “(Wales) (Amendment)”
- Amend regulation 2(2)(a) in the Welsh version of the Regulations to ensure consistency with the English version of the Regulations. Specifically, “*pla cwarantín ...*” is amended to read “*“pla cwarantín ...”*”. This makes it clearer what text is being substituted.
- Amend Regulations 2(2)(a)(i) and (iii) in the Welsh version of the Regulations to include quotation marks preceding the defined term in paragraph A1 of Schedule 2 to the Seed Marketing (Wales) Regulations 2012.

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

The Legislation, Justice and Constitution Committee (LJCC) reported on the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022 on 24 October 2022 ([SL\(6\)267](#)). In that report they noted a number of corrections that should be made to that Statutory Instrument. Welsh Government agreed to make those corrections and is doing so via these Regulations.

These Regulations are being made using the powers provided under section 1(1) of Schedule 2 of the European (Withdrawal) Act 2018.

As set out in the [Explanatory Memorandum](#) to the Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022, and subsequently in Part 2 of this Explanatory Memorandum, it is proposed that this instrument be subject to negative resolution procedure as the instrument corrects technical deficiencies and does not introduce additional burden on the general public, nor are these amendments controversial. Therefore it should be subject to annulment.

The Legislation, Justice and Constitution Committee (LJCC) considered a draft of these regulations on 12 December 2022, and agreed that the negative procedure is appropriate for these regulations. A copy of the published LJCC’s report can be accessed via the following link: [LJC33-22 - Paper 34 - Draft](#)

[report.pdf \(senedd.wales\)](#)

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2022 Instrument will come into force less than 21 days after the instrument has been laid. The Regulations are being made using powers under the European Union (Withdrawal) Act 2018, and these powers expire on 31 December 2022. As such, the Regulations need to come into force by 31 December.

3. Legislative background

These Regulations are 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 has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

These Regulations revoke the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022 and replace them here, and make minor corrections to those Regulations, as outlined above.

Those Regulations amend secondary legislation relating to the marketing of seed and fruit planting material to correct operability deficiencies that were not accounted for in earlier amending instruments. For further information on the effect of those Regulations, please see the Explanatory Memorandum published alongside them. This can be accessed here: [sub-ld15375-em-e.pdf \(senedd.wales\)](#).

4. Purpose and intended effect of the legislation

These Regulations revoke and replace the prior Regulations to ensure consistency between the English and Welsh versions of the Regulations. They make no changes to the policy or the effect of the prior legislation.

5. Consultation

As the Regulations make minor corrections, a formal public consultation did not take place.

6. Regulatory Impact Assessment (RIA)

As the Regulations make minor corrections to update subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.

Annex A

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 Standing Order 27.1A	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 LJC 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 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.	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. Sifting statement(s)

The Minister for Rural Affairs and North Wales, and Trefnydd, 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 (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2022 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure)”. This is the case because: the instrument corrects minor inconsistencies between the English and Welsh versions of the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022 and does not introduce additional burden on the general public, nor are these amendments controversial.

2. Appropriateness statement

The Minister for Rural Affairs and North Wales, and Trefnydd, 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 (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2022 does no more than is appropriate.

This is the case because the instrument corrects minor inconsistencies between the English and Welsh versions of the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022.

3. Good reasons

The Minister for Rural Affairs and North Wales, and Trefnydd, 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:

This is the case because the instrument corrects minor inconsistencies between the English and Welsh versions of the Marketing of Seeds, Plant and Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022.

4. Equalities

4.1 The Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, made the following statement(s) “The draft 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 Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, The Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, has 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.”

5. Explanations

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

6. Criminal offences

Not required.

7. Legislative sub-delegation

Not required.

8. Urgency

Not required.