

Explanatory Memorandum to The Seed (Equivalence) (Amendment) (Wales) Regulations 2022.

This Explanatory Memorandum has been prepared by the Department of 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 Seed (Equivalence) (Amendment) (Wales) Regulations 2022 and I am satisfied that the benefits justify the likely costs.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

7 December 2022

PART 1

1. Description

- 1.1. The Seeds (Equivalence) (Amendment) (Wales) Regulations 2022 (“the Regulations”) amend Article 6 of Council Decision 2003/17 of 16 December 2002 on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries. The Regulations extend the expiry date of this Decision. It has been extended for 7 years and will now expire on 31 December 2029.

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

- 2.1. None.

3. Legislative background

- 3.1. The Regulations are being made under the power provided to Welsh Ministers under section 16 of the Plant Varieties and Seeds Act 1964 (“the PVSA”) (as glossed by the European Union Withdrawal Act 2018 (“EUWA”).
- 3.2. Decision 2003/17 is retained direct minor EU legislation, as defined by section 7 of the EUWA. The Decision was incorporated into United Kingdom law by Section 3 of EUWA. Paragraph 5(2) of Schedule 8 to the EUWA provides that retained direct minor EU legislation may be modified by existing powers to amend subordinate legislation that came into force before the EUWA, if that power does not permit repeal or amendment of primary legislation.
- 3.3. Section 16 of the PVSA is a broad power. Section 16(1A) provides that: *“Seeds regulations may further make provision for regulating the marketing, or the importation or exportation, of seeds or any related activities.”* Section 16 is read as being capable to modify retained direct minor EU law.
- 3.4. A statutory instrument made under s16 of the PVSA follows the negative procedure, as set out in s16(6) of the PVSA. Paragraph 6 of Schedule 8 of the EUWA states that subordinate legislation made by virtue of paragraph 5(2) of EUWA is subject to the same procedure as would apply to that legislation under the existing power, i.e. Section 16(1A) of the PVSA. As such, these regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1. The Regulations extend Retained EU Council Decision 2003/17/EC by seven years, so that it will expire on 31 December 2029.
- 4.2. For most seed and other propagating material produced outside of the UK to be marketed in Great Britain (GB), the systems of field inspections, production and certification of seed in the country of production need to be recognised as equivalent to those in GB.
- 4.3. For certain specified countries, this equivalence is granted by EU Council Decision 2003/17/EC. The Council Decision covers fifteen countries, including Argentina, Australia, Canada, Israel, New Zealand and USA. The Council Decision, as it applies to GB, is due to expire on 31 December 2022. To ensure that qualifying seed produced in the specified countries can continue to be marketed in GB, this decision needs to be extended. This must be done through legislation.
- 4.4. Extending the Council Decision ensures no disruption to existing trade between GB and countries it grants equivalence to. It also ensures that growers and suppliers can continue to source seed and propagating material that meets the quality and standards we expect from our trading partners.
- 4.5. GB is unable to produce the levels of certain agricultural seeds or plant propagating material required to grow food and feed crops for humans and livestock. We are reliant on the import of seed and plant propagating material from other countries. Failing to extend the Council Decision would reduce the size of the international market that Welsh growers and suppliers can access and source seed from. This could limit the choice of seed that growers would have and possibly the levels they could import. This could compel growers to import less favourable varieties with potentially lower yields and/or disease resistance. This, in turn, could lead to a situation where growers are unable to produce enough food crops for humans and livestock or where there is less choice for the final consumer.
- 4.6. The Council Decision is being extended for 7 years. Extending the expiry date of the Decision will also provide an opportunity for a GB wide policy review of the equivalence process to be undertaken to consider alignment with provisions in the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”). Part 5, regulation 26 of the 2020 Regulations provide for the recognition of the equivalence of plant material from countries outside of the British Islands on an administrative rather than legislative basis.

5. Consultation

- 5.1. A six week period of informal stakeholder engagement ran between 1 August 2022 and 11 September 2022 on the proposal to extend the Council Decision. This was undertaken jointly by the Welsh, Scottish and UK Governments. A letter was sent to key stakeholders, including Welsh farming and horticultural organisations. Five responses were received from representative bodies for plant breeders rights, farmers, the British potato trade and the seed trade. There was broad support for the proposal.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered in this Regulatory Impact Assessment. These are:

- A) Do not make the legislation (do nothing)
- B) Make the legislation (to maintain the status quo)

7. Costs and benefits

Option A – do not make legislation

Under this option, the Council Decision would not be extended. This would mean that Wales no longer recognised fifteen Non-EU countries as having equivalent standards of production and certification of certain seed and other propagating material compared to GB. These countries are Argentina, Australia, Brazil, Canada, Chile, Israel, Moldova, Morocco, New Zealand, Serbia, Turkey, Ukraine, USA, Uruguay, and South Africa. It would then be prohibited for Welsh growers to import affected seed from these countries for marketing.

Costs

Some data is available on how much seed is imported and exported between GB and countries covered by the Council Decision. This data is not disaggregated further, so it is not possible to set out the value of material imported into Wales specifically. That said, approximately 23,000 tonnes of seed and other propagating material are imported into GB each year from these fifteen countries (an average of 2019-2021 figures), valued at around £20.2m a year.

If Welsh Ministers decide not to extend equivalence to these countries, Welsh growers and seed suppliers will be unable to import certain seed and propagating material directly from these countries. This decreases the breadth of the market that Welsh businesses can access to source seed from. This may mean that they cannot access seed at as competitive a price as they had done previously, or in comparison to their English and Scottish counterparts. Ultimately, it may cost them more money to import the seed they need if the Council Decision is not extended. This will affect their profits when they come to market the seed or crops grown from it.

Further, there is a risk Welsh businesses would be unable to source the levels of seed they do now. With less seed available, fewer crops would be grown. This could mean that consumers face less choice, higher prices or, in a worst-case scenario, there is a risk to the food security of Wales if demand outstrips supply.

As the Council Decision is being extended in England and Scotland, growers and suppliers based in Scotland and England will be able to import seed and other propagating material from the fifteen countries. Welsh growers may be able to

purchase seed and other propagating material from England and Scotland, but this may come at an increased cost compared to directly importing the seed. In the event of different regulatory regimes in Wales and Scotland and England, there may be increased costs for growers having to comply with different regulatory regimes.

There is also a risk that, in failing to extend equivalence to these countries, they will stop recognising GB as equivalent. GB exports seed and propagating material of an average value of around £12m a year to these countries. This option therefore risks financial harm to Welsh producers that export seed and other propagating material.

Benefits

No benefits have been identified with this option. Although there is a cost to importing seed, it is necessary as GB is unable to produce the levels of certain agricultural seeds or plant propagating material required to produce food and feed for humans and livestock.

Option B – Make legislation extending the equivalence decision

Under this option, the Council Decision would be extended by 7 years. This would mean that Wales continues to recognise fifteen Non-EU countries as having equivalent standards of production and certification of seed and other propagating material. Welsh growers could continue to legally import seed from these countries for marketing purposes.

Costs

No additional costs have been identified for this option. Whilst, ideally, Wales would be self-sufficient in generating the seed and propagating material it needs, this is not achievable. Therefore, Wales is reliant on importing this material.

Benefits

As outlined for option A, GB imports approximately 23,000 tonnes of seed and other propagating material a year from these 15 countries, and this is valued at around £20.2m a year. Continuing to enable import of seed in this way will enable Welsh growers to access a wider international market. This greater choice will help ensure they are able to source seed at competitive prices, knowing that seed has met acceptable production and certification standards in the country it was sourced from. This will in turn enable them to continue to grow and market high quality seed and crops. It will also help ensure that Wales grows the levels of food and feed crops needed to satisfy human and livestock demands.

Further, as the Council Decision is being extended in England and Scotland, it means the legislative landscape will be consistent across GB. This will make it simpler and easier for businesses operating in GB. It also ensures Welsh businesses are not at a disadvantage compared to their English and Scottish counterparts.

This option mitigates the risk that, in failing to extend equivalence to the 15 countries, they will stop recognising GB as equivalent. GB exports seed and propagating material of an average value of around £12m a year to these countries.

Integrated impact assessment

An integrated impact assessment has been undertaken for these Regulations. This has not identified any major impacts on any sectors. Mandatory impact assessments have been completed as follows:

Consultation

A six week period of informal stakeholder engagement was undertaken to gather views on the proposal to extend the Council Decision. Five responses were received from representative bodies for plant breeders' rights, farmers, British potato trade and seed trade. These were all supportive of option B, although none provided quantitative data that could inform this impact assessment.

Conclusion

Option B is the recommended option. It maintains the status quo, enabling Welsh businesses to continue to import seed and propagating material from certain international markets. No costs have been identified for this option. In contrast, Option A may result in costs for Welsh businesses, growers and consumers, and no benefits have been identified for any affected groups.

6. Competition Assessment

The competition filter assessment has been undertaken as follows:

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No

The competition filter test	
Question	Answer yes or no
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

No competition concerns have been identified. These Regulations will ensure that all importers of seed and other propagating material continue to have access to the international market.

7. Post implementation review

The Council Decision is being extended for 7 years. Extending the expiry date of the Decision will also provide an opportunity for a GB wide policy review of the equivalence process to be undertaken to consider alignment with provisions in the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”). Part 5, regulation 26 of the 2020 Regulations provide for the recognition of the equivalence of plant material from countries outside of the British Islands on an administrative rather than legislative basis.