

2019 No. (W.)

SEEDS, WALES

**The Forest Reproductive Material
(Great Britain) (Amendment)
(Wales) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Forest Reproductive Material (Great Britain) Regulations 2002 (S.I. 2002/3026) (“the Principal Regulations”) in relation to Wales.

The amendments set out the revised requirements which apply in Wales in relation to forest reproductive material produced in countries outside the European Union and—

- (a) implement Council Decision 2008/971/EC on the equivalence of forest reproductive material produced in third countries (OJ No L 345, 23.12.2008, p. 83), as amended by Decision No. 1104/2012/EU of the European Parliament and of the Council (OJ No L 328, 28.11.2012, p. 1); and
- (b) implement in full the derogation permitted by Commission Decision 2008/989/EC authorising member States, in accordance with Council Directive 1999/105/EC, to take decisions on the equivalence of the guarantees afforded by forest reproductive material to be imported from certain third countries (OJ L 352, 31.12.2008, p. 55).

Regulation 3(1)(b) provides for the references to Council Decision 2008/971/EC in the Principal Regulations to be read as references to that instrument as amended from time to time.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

2019 No. (W.)

SEEDS, WALES

**The Forest Reproductive Material
(Great Britain) (Amendment)
(Wales) Regulations 2019**

Made 5 March 2019

Laid before the National Assembly for Wales

7 March 2019

Coming into force 28 March 2019

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Union.

The Welsh Ministers make these Regulations in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽³⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references to the European Union instrument mentioned in regulation 3(1)(b) to be construed as references to that instrument as amended from time to time.

-
- (1) S.I. 2010/2690.
(2) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(3) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and was amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.

Title, application and commencement

1.—(1) The title of these Regulations is the Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 28 March 2019.

Amendment of the Forestry Reproductive Material (Great Britain) Regulations 2002

2. The Forest Reproductive Material (Great Britain) Regulations 2002⁽¹⁾ are amended as follows.

Regulation 2 (interpretation)

3.—(1) In regulation 2(2)⁽²⁾—

(a) for the definition of “approved basic material” substitute—

““approved basic material” in relation to basic material approved by an appropriate authority means basic material which is approved in accordance with regulation 7;”;

(b) after the definition of “contact details” insert—

““Council Decision 2008/971/EC” means Council Decision 2008/971/EC on the equivalence of forest reproductive material produced in third countries⁽³⁾, as amended from time to time;”;

(c) after the definition of “EC classification” insert—

““EU-approved third countries” are Canada, Norway, Serbia, Switzerland, Turkey and the United States of America;”;

(1) S.I. 2002/3026, amended by S.I. 2006/2530, 2011/1043, 2013/755 (W. 90). The functions of the Forestry Commissioners, as regards Wales, were transferred to the Welsh Ministers and are conferred on them as an “appropriate authority”; the definition of “appropriate authority” was inserted by the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)), Schedule 4, paragraphs 137 and 138(2)(a). There are other amendments, but none is relevant.

(2) The definition of “Master Certificate” was substituted by S.I. 2006/2530, regulation 3(a) and amended by S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 138. The definition of “official body” was substituted by S.I. 2006/2530, regulation 3(b). The definition of “official certificate” was inserted by S.I. 2006/2530, regulation 3(c) and amended by S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 138. There are other amendments to regulation 2(2), but none is relevant.

(3) OJ No L 345, 23.12.2008, p. 83, amended by OJ No L 328, 28.11.2012, p. 1 and OJ No L 158, 10.6.2013, p. 1.

(d) for the definition of “Master Certificate” substitute—

““Master Certificate” means—

- (a) in the case of forest reproductive material collected or otherwise derived from basic material which is located in a relevant territory, a Master Certificate issued in accordance with regulation 13;
- (b) in the case of forest reproductive material collected or otherwise derived from basic material which is located in Northern Ireland, a Master Certificate issued by the official body for Northern Ireland in accordance with Article 12 of the Directive;
- (c) in the case of forest reproductive material collected or otherwise derived from basic material which is located in another member State, a Master Certificate issued by an official body of that member State in accordance with Article 12 of the Directive;
- (d) in the case of forest reproductive material produced in an EU-approved third country, a Master Certificate issued by the appropriate authority in accordance with regulation 25(5) and (6) or a Master Certificate issued by a relevant official body in accordance with Article 4 of Council Decision 2008/971/EC;
- (e) in the case of forest reproductive material produced in a permitted third country, a Master Certificate issued by the appropriate authority in accordance with regulation 25(5), a Master Certificate issued in relation to the material by an official body of a member State or an official certificate within the meaning of paragraph 8 of Schedule 13;”;

(e) for the definition of “official body” substitute—

““official body”—

- (a) in relation to a member State has the meaning given in Article 2(k) of the Directive;
- (b) in relation to an EU-approved third country means the competent authority for the relevant country, as listed in Annex I to Council Decision 2008/971/EC;

- (c) in relation to a permitted third country means the authority or body which is officially responsible in that country for the approval and control of forest reproductive material produced by the country;”;
 - (f) omit the definition of “official certificate”;
 - (g) after the definition of “part of plants” insert—
 - ““permitted third countries” are Belarus, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and New Zealand;”;
 - (h) for the definition of “plant passport” substitute—
 - ““plant passport” has the meaning given in the Plant Health (Forestry) Order 2005(1);”;
 - (i) in the definition of “unit of approval”, after “unit of approval” insert “, except in regulation 14(1)”.
- (2) After regulation 2(4) insert—
- “(4A) Other terms in these Regulations that appear in the Directive of Council Decision 2008/971/EC have the same meaning in these Regulations as they have in the Directive or that Decision.”

Regulation 14 (identification and separation of forest reproductive material during production)

4.—(1) In regulation 14(1)(f), for paragraph (i) substitute—

“(i) the reference number given to the approved basic material from which the forest reproductive material is derived; or”.

(2) After regulation 14(3)(2) insert—

“(4) In this regulation—

(a) “reference number” means—

- (i) in the case of basic material approved by an appropriate authority in accordance with regulation 7, the reference number given to the material in the National Register;
- (ii) in the case of basic material approved by any other official body of a member State, the

(1) S.I. 2005/2517; there are amending instruments but none is relevant.

(2) Regulation 14(3) was amended by S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 146. There are other amendments to regulation 2(2), but none is relevant.

reference number given to the material in the register drawn up and maintained by the official body in accordance with Article 10 of the Directive;

(iii) in the case of approved basic material from which reproductive material produced in an EU-approved third country or a permitted third country has been derived, the reference number given to the material in the national register of basic material approved for forest reproductive material drawn up and maintained by the official body of that country;

(b) “unit of approval”—

(i) in the case of forest reproductive material derived from basic material approved by an appropriate authority, has the meaning given in regulation 7(5);

(ii) in the case of forest reproductive material derived from basic material approved by another official body, means the unit of basic material from which the forest reproductive material is derived, as recorded in the national register of basic material approved for forest reproductive material drawn up and maintained by the official body.”

Regulation 17 (forest reproductive material which may be marketed)

5. For paragraph (1) of regulation 17(1) substitute—

“(1) Subject to regulations 18 and 31, no person shall market forest reproductive material in Wales unless—

(a) in the case of forest reproductive material produced in a relevant territory—

(i) its collection and production meet the requirements of regulations 10 to 12 and 14 and 15;

(ii) it has been certified in accordance with regulation 13; and

(1) Regulation 17(1) was amended by S.I. 2006/2530, regulation 5 and S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 148.

- (iii) it falls into one of the categories described in regulation 4(1), subject as the case may be to the application of regulation 7(2) and (3);
- (b) in the case of forest reproductive material produced in Northern Ireland or another member State, it was accompanied on its entry into Wales by the supplier's label or document required by Article 14 of the Directive;
- (c) in the case of forest reproductive material produced in an EU-approved third country and imported from a third country into Wales, a Master Certificate has been issued by the appropriate authority in relation to the material in accordance with regulation 25(5) and (6);
- (d) in the case of any other forest reproductive material produced in an EU-approved third country—
 - (i) a Master Certificate has been issued in relation to the material in accordance with Article 4 of Decision 2008/971/EC; and
 - (ii) the forest reproductive material was accompanied on its entry into Wales by the supplier's label or document required by Article 14 of the Directive;
- (e) in the case of forest reproductive material produced in a permitted third country and imported from a third country into Wales, it has met the requirements as to entry into Wales set out in regulation 25;
- (f) in the case of any other forest reproductive material produced in a permitted third country—
 - (i) a Master Certificate has been issued in relation to the material by an official body of a member State; and
 - (ii) the forest reproductive material was accompanied on its entry into Wales by the supplier's label or document required by Article 14 of the Directive;
- (g) it is marked and labelled in compliance with paragraphs (2) to (7), regulation 14 and regulation 19 as read with regulation 20 in the case of seeds; and

- (h) it meets the requirements of paragraphs (8) to (12).”

Regulation 18 (licences)

6. For regulation 18(1) substitute—

“**18.**—(1) The appropriate authority may authorise a registered supplier by licence to—

- (a) market forest reproductive material in Wales which would otherwise be prohibited under regulation 17(1);
- (b) import into Wales forest reproductive material which would otherwise be prohibited under regulation 25.

(2) The licence shall be in writing and may be granted—

- (a) subject to conditions;
- (b) for a definite or an indefinite period.

(3) The appropriate authority may only give an authorisation under paragraph (1)(a) or (1)(b)—

- (a) if the forest reproductive material is to be marketed for use in tests, for scientific purposes or for generic conservation purposes;
- (b) if the forest reproductive material consists of seed units which are clearly shown not to be intended for forestry purposes; or
- (c) in exercise of a derogation permitted by the Directive.

(4) The appropriate authority may also give an authorisation under paragraph (1)(a) if the forest reproductive material is to be marketed for use in selection work.

(5) If the appropriate authority decline to give an authorisation under paragraph (1), they shall give the applicant their reasons for doing so in writing.”

Regulation 19 (labelling and packaging of lots for marketing)

7. In regulation 19—

- (a) in paragraph (3), for “sub-paragraph (2)(b)” substitute “paragraph (2)(b) or, in the case of material produced in an EU-approved third country, the requirements of paragraph (2)(d)”;

(1) Regulation 18 was amended by S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 149.

- (b) in paragraph (4), for “sub-paragraphs” substitute “paragraph”.

Regulation 25 (prohibition against imports of forest reproductive material from third countries)

8. For regulation 25(1) substitute—

“Prohibition against imports of forest reproductive material into Wales from third countries

25.—(1) No person may import forest reproductive material into Wales from a third country for the purpose of marketing it unless—

- (a) it has been produced in an EU-approved third country or permitted third country;
- (b) it is permitted material; and
- (c) the requirements set out in Schedule 13 are met on entry.

(2) A person intending to import permitted material into Wales from an EU-approved third country or a permitted third country shall notify the appropriate authority of the arrival of the material at least three days before the intended date of its arrival into Wales.

(3) The notification to the appropriate authority shall be—

- (a) in writing;
- (b) contain the following details in relation to the material—
 - (i) its anticipated point of entry into Wales; and
 - (ii) its anticipated date and time of arrival into Wales

(4) After the permitted material has been imported into Wales, the owner of the permitted material may apply to the appropriate authority for a Master Certificate in relation to the material.

(5) If the appropriate authority is satisfied that the requirements set out in Schedule 13 have been met in relation to the permitted material, the appropriate authority shall issue a Master Certificate for the material to its owner.

(6) In the case of permitted material from an EU-approved third country, a Master Certificate issued under paragraph (5) shall—

(1) Regulation 25 was substituted by S.I. 2006/2530, regulation 9 and amended by S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 155.

- (a) be based on the OECD Certificate of Provenance; and
 - (b) indicate that the material has been imported under an equivalence regime.
- (7) In this regulation—
- “OECD Certificate of Provenance” has the meaning given in paragraph 2 of Schedule 13;
 - “permitted material” has the meaning given in paragraph 2 of Schedule 13.”

Regulation 32 (appeals)

9. In regulation 32(1)(g)(1), omit “to market forest reproductive material”.

Schedule 13

10. For Schedule 13 substitute—

“Schedule 13 Regulation 25

PART 1

Forest reproductive material imported into
Wales from third countries

Scope of Schedule

1. This Schedule applies to consignments of forest reproductive material produced in an EU-approved third country or a permitted third country.

Interpretation

2. In this Schedule—

“OECD Certificate of Provenance” means a certificate of provenance issued in accordance with the rules of the OECD Scheme;

“OECD label” means a label issued in accordance with the rules of the OECD Scheme;

“the OECD Scheme” means the OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade adopted by Decision C(2007)69 of the Council of the Organisation for Economic Co-operation

(1) Regulation 32(1) was amended by S.I. 2013/755 (W. 90), Schedule 4, paragraphs 137 and 158.

and Development, as last amended by Decision C(2013)30 of that Council⁽¹⁾;

“permitted material” means—

- (a) in the case of forest reproductive material produced in an EU-approved third country, forest reproductive material which—
 - (i) is in the form of seeds or planting stock;
 - (ii) is of a species or artificial hybrid listed in Schedule 1;
 - (iii) has been certified as “source-identified”, “selected” or “qualified” by the relevant official body in accordance with the rules of the OECD Scheme;
 - (iv) where it is in the form of seeds, it has been certified as derived from approved basic material by the relevant official body; and
 - (v) where it is in the form of planting stock, it has been produced in a nursery registered with, or under the official supervision of, the relevant official body;
- (b) in the case of forest reproductive material produced in a permitted third country, forest reproductive material which—
 - (i) is of the species listed in the second column of the table below opposite the reference to the country listed in the first column of the table;
 - (ii) has been certified as “source identified” by the relevant official body; and
 - (iii) is derived from a seed source or a stand.

<i>Country of origin</i>	<i>Species</i>
Belarus	<i>Picea abies</i> Karst.
Bosnia and Herzegovina	<i>Pinus nigra</i> Arnold
The former Yugoslav Republic of Macedonia	<i>Abies alba</i> Mill.
New Zealand	<i>Pinus radiata</i> D. Don

(1) Available from the OECD Secretariat, Trade and Agriculture Directorate, Agricultural Codes and Schemes (TAD/COD), 2, rue André-Pascal, 75775 Paris, Cedex 16, France and at www.oecd.org.

PART 2

Scope of Part 2

3. This Part applies to consignments of permitted material produced in an EU-approved third country.

General requirements

4.—(1) A consignment of permitted material shall be accompanied by—

- (a) a copy of the OECD Certificate of Provenance issued in relation to the permitted material; or
- (b) a document completed by the supplier of the consignment containing—
 - (i) all of the information contained in the OECD Certificate of Provenance; and
 - (ii) in relation to any seed lot, the information specified in paragraph 5.

(2) An OECD label shall be attached to each seed lot and to each consignment of planting stock.

Additional requirements applicable to seed lots

5.—(1) The OECD label attached to a seed lot and any supplier's document accompanying the seed lot shall contain the following additional information in relation to the seed lot, assessed, so far as is practical in all the circumstances, using internationally accepted techniques—

- (a) the percentage by weight of pure seed, other seed and inert matter;
- (b) the germination percentage of pure seed, or where the germination percentage is impossible or impractical to assess, the viability percentage assessed by reference to a method which shall be described;
- (c) the weight of 1000 pure seeds;
- (d) the number of germinable seeds per kilogram of the seed, or where the number of germinable seeds is impossible or impractical to assess, the number of viable seeds per kilogram; and

(e) in the case of a seed lot of closely related species which does not reach a minimum species purity of 99%, the species purity.

(2) But the OECD label and supplier's document may omit the following information—

(a) any information mentioned in sub-paragraph (1)(a) to (e) which is yet to be ascertained by testing the seed using internationally accepted techniques;

(b) in the case of a seed lot containing seed which has been harvested from the current season's crop, any information mentioned in sub-paragraph (1)(b) or (d) which is not yet available;

(c) in the case of seed which is to be marketed in quantities no greater than those described for the species or artificial hybrid of the seed in Schedule 11, the information mentioned in sub-paragraph (1)(b) or (d).

(3) All seed shall be consigned in sealed packages which have been closed in accordance with the rules of the OECD Scheme.

Additional requirements applicable to seed or planting stock of the “qualified category”

6. In the case of forest reproductive material in the form of seed or planting stock of the “qualified category”, the OECD label attached to a seed lot or to a consignment of planting stock shall state whether genetic modification has been used in the production of the basic material from which the forest reproductive material is derived.

PART 3

Scope of Part 3

7. This Part applies to consignments of permitted material produced in a permitted third country.

Requirements

8. A consignment of permitted material shall be accompanied by—

(a) an official certificate issued by the official body of the country in which the permitted material was produced which contains equivalent information

to the information required to complete Schedule 6 and meets equivalent requirements to those specified in regulation 13(9) and (10); and

- (b) a document provided by the supplier in the country of origin of the permitted material containing details of the permitted material in the consignment.”

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers

5 March 2019