

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

Minister for Rural Affairs and North Wales, and Trefnydd
6 October 2022

PART 1

1. Description

These Regulations make operability amendments to domestic legislation relating to the marketing of seed and fruit planting material, required as a result of the UK's Exit from the European Union.

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

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 Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed that this instrument be subject to negative resolution procedure. 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 26 September 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:

<https://senedd.wales/media/iusplhdg/cr-ld15345-e.pdf>

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 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.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The marketing of seed of the main agricultural species and fruit plant propagating material is regulated at Community level by the following directives:

Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed

Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed

Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed
Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed

Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants

Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

These directives prescribe processes to ensure minimum quality standards and traceability for marketed seed and fruit plant propagating material. They also set out administrative provisions (including, where appropriate, provision for fees), impose record keeping requirements and provide for the licensing of industry crop inspectors, seed samplers and seed testing stations to carry out these statutory functions. The above EU Directives have been retained in domestic law. The Seed Marketing (Wales) Regulations 2012 (the “2012 Regulations”) and Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 (the “2017 Regulations”) implement these Directives in Wales.

Why is it being changed?

These Regulations make some minor operability amendments to the 2012 Regulations and 2017 Regulations, relating to the marketing of seed and fruit planting material. They amend EU references which are no longer appropriate and which were overlooked in earlier amending instruments.

Plants and seeds can carry pests that represent a biosecurity risk to Wales. If left unregulated, pests can cause economic and environmental damage. These Regulations amend Welsh law to ensure it is operable, improving the biosecurity of Wales.

What will it now do?

This instrument makes minor technical changes to enable Welsh law on the marketing of seed and fruit planting material to continue to function effectively following the withdrawal of the UK from the EU. Specifically, references to the “Union” will be amended to GB and references to “protected zone”, which is defined as a particular area within an EU Member State, will be amended to “PFA” or pest free area.

5. Consultation

As the Regulations provide a limited amendment, affecting a small number of individuals and does not reflect a change in the Welsh Government’s policy, a formal public consultation did not take place.

6. Regulatory Impact Assessment (RIA)

As these Regulations make factual amendments 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	A statement that the SI does no more than is appropriate.

		when exercising powers in Schedule 2	
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, 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	<p>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.</p> <p>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</p>	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(s)

The Minister for Climate Change, Julie James 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) 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 technical deficiencies and does not introduce additional burden on the general public, nor are these amendments controversial.

2. Appropriateness statement

The Minister for Climate Change, Julie James 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) Regulations 2022 does no more than is appropriate.

This is the case because this instrument corrects technical deficiencies that arise from the UK’s withdrawal from the EU and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively. This is in line with government policy.

3. Good reasons

The Minister for Climate Change, Julie James 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:

- That secondary legislation on the marketing of seed and fruit planting material is made fully operable after the UK’s withdrawal from the EU so that it remains effective and functions correctly.

4. Equalities

4.1 The Minister for Climate Change, Julie James has 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 Climate Change, Julie James 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 Climate Change, Julie James 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.”

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.