

Explanatory Memorandum to The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department 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 Seed, Plant and Propagating Material (Wales) Regulations 2020

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Minister for Environment, Energy and Rural Affairs
6 August 2020

PART 1

1. Description

These Regulations amend certain domestic marketing legislation to update and amend the pest requirements on plant reproductive material intending for marketing. This is to ensure that this material is practically free from Union regulated non-quarantine pests (“RNQPs”) at the place of production and that the presence of such pests does not exceed specified thresholds. These requirements complement and are in addition to those in existing plant health legislation, which introduced this new category of pests

These Regulations are required to assist the UK to meet its obligations under the Withdrawal Agreement to transpose EU law into domestic legislation until the end of the Implementation Period (31 December 2020). These Regulations transpose Commission Implementing Directive (EU) 2020/177 which makes amendments to certain marketing directives for seed and other propagating material as regards pests of plants on seeds and other plant reproductive material (OJ No L. 41, 13.2.2020, p. 1) (“the 2020 Directive”) in relation to RNQPs.

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

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of these Regulations because they are giving effect to EU provisions. Further, these Regulations amend Regulations that were subject to the negative procedure.

3. Legislative background

These Regulations amend:

- the Marketing of Vegetable Plant Material Regulations 1995 (SI 1995/2652) (“the 1995 Regulations”);
- the Marketing of Ornamental Plant Propagating Material Regulations 1999 (SI 1999/1801) (“the 1999 Regulations”);
- the Seed Marketing (Wales) Regulations 2012 (SI 2012/245) (W. 39) (“the 2012 Regulations”);
- the Seed Potatoes (Wales) Regulations 2016 (SI 2016/106) (W. 52) (“the 2016 Regulations”); and
- the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 (SI 2017/691) (W. 163) (“the 2017 Regulations”).

Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions as regards protective measures against pests of plants (OJ No L.

319, 10.12.2019, p. 1) (“the Phytosanitary Conditions Regulation”) implements Regulation (EU) 2016/2031 as regards protective measures against pests of plants (OJ No L. 317, 23.11.2016, p. 4) (“the Plant Health Regulation”). The Plant Health Regulation and the Phytosanitary Conditions Regulation have applied to the UK since December 2019 and introduce a revised plant health import and movement regime including a new category of pests known as RNQPs. They are part of the wider EU Smarter Rules for Safer Food package of regulations which modernises the existing health and safety standards of the agri-food chain.

The 2020 Directive amends the pest and disease requirements and standards found in the EU marketing directives (listed below) to provide requirements concerned with RNQPs that complement and are in addition to those in the Phytosanitary Conditions Regulation.

The EU marketing directives (“the Marketing Directives”) have been transposed into domestic legislation as follows:

- The 1995 Regulations implement:
 - Council Directive 2008/72/EC on the marketing of vegetable propagating and planting material, other than seed (OJ No. L 205, 1.8.2008, p. 28); and
 - Commission Directive 93/61/EEC setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 2008/72/EC (OJ No. L 250, 7.10.1993, p. 19).
- The 1999 Regulations implement:
 - Council Directive 98/56/EC on the marketing of propagating material of ornamental plants (OJ No. L 226, 13.8.1998, p. 16); and
 - Commission Directive 93/49/EEC setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 93/682/EEC (OJ No. L 250, 7.10.1993, p. 9).
- The 2012 Regulations implement:
 - Council Directive 66/401/EEC on the marketing of fodder plant seed (OJ No. L 125, 11.7.1966, p. 2298);
 - Council Directive 66/402/EEC on the marketing of cereal seed (OJ No. L 125, 11.7.1966, p. 2309);
 - Council Directive 2002/55/EC on the marketing of vegetable seed (OJ No. L 193, 20.7.2002, p. 33); and
 - Council Directive 2002/57/EC on the marketing of seed of oil and fibre (OJ No. L 193, 20.7.2002, p. 74).
- The 2016 Regulations implement:
 - Council Directive 2002/56/EC on the marketing of seed potatoes (OJ No. L 193, 20.7.2002, p. 60); and
 - Commission Implementing Directive 2014/21/EU determining minimum conditions and Union grades for pre-basic seed potatoes (OJ No. L 38, 7.2.2014, p. 39).
- The 2017 Regulations implement:

- Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ No. L 267, 8.10.2008, p. 8); and
- Commission Implementing Directive 2014/98/EC implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections (OJ No. L 298, 16.10.2014, p. 22).

The 1995 and 1999 Regulations apply to Great Britain, similar legislation operates in Northern Ireland. The 2012, 2016 and 2017 Regulations apply to Wales only, similar legislation operates in Scotland, England and Northern Ireland.

Council Directive 68/193/EEC on the marketing of material for the vegetative propagation of the vine (OJ No. L 93, 17.4.1968, p. 15) is also amended by the 2020 Directive, however the UK is derogated from the requirement to transpose and implement legislation concerned with vine propagating material.

These Regulations amend the domestic legislation listed above to transpose amendments made by the 2020 Directive to the Marketing Directives. In addition, amendment is made to the 1995 and 2017 Regulations to transpose notification requirements in Council Directives 2008/72/EC and 2008/90/EC for a producer or supplier of vegetable propagating material or fruit plant propagating material to report to an inspector the presence of a regulated pest of plants, including RNQPs.

The marketing of the following types of plant reproductive material is regulated at EU level by the Marketing Directives:

- fodder seed;
- cereal seed;
- propagating material of ornamental plants;
- vegetable seed;
- vegetable propagating and planting material;
- seed potatoes;
- seed of oil and fibre; and
- fruit plant propagating material and fruit plants intended for fruit production.

The Marketing Directives establish a regime to ensure that purchasers throughout the European Union receive seeds, plants and other plant propagating material (“plant material”) which is healthy and of good quality. They set quality standards to be met by species of plant material when marketed and prescribe conditions to be satisfied by suppliers of plant material.

The Phytosanitary Conditions Regulation establishes uniform conditions for the implementation of the Plant Health Regulation. This includes an update to the phytosanitary status of pests found in the Marketing Directives following a review of pests carried out by the European and Mediterranean Plant

Protection Organisation (“EPPO”). Certain pests, some of which are listed in the Marketing Directives, fulfil the conditions provided for in the Plant Health Regulation to be included in the list of RNQPs.

The Phytosanitary Conditions Regulation lists the RNQPs relating to specific plants for planting, categories and thresholds. It also provides the measures to be taken to prevent the presence of RNQPs on those specific plants for planting.

The 2020 Directive makes consequential amendments to the Marketing Directives to take account of the updated pest status of the pests listed in those directives and updates the measures to determine the presence of pests. It also introduces pests that were quarantine pests but are now assessed, following the review carried out by EPPO, as RNQPs or new pests for regulation as an RNQP. The amendments align with the directly applicable Phytosanitary Conditions Regulation.

These Regulations adapt or remove provisions concerning pest and disease standards regulated in the marketing regulations listed above which have been re-classified as RNQPs. These Regulations transpose the requirement for the crop and seed produced by the crop to comply with the conditions of the Phytosanitary Conditions Regulation as a condition of certification in the 2012 Regulations.

Council Directives 2008/72/EC and 2008/90/EC contain provisions for reporting the presence of pests on vegetable propagating and planting material and fruit plant propagating material and fruit plants intended for fruit production. These Regulations transpose those requirements in full and make clear that a reporting requirement exists for all pests, including the reclassified RNQPs.

These Regulations also correct a formatting error in the potato disease tolerance tables in Schedule 3 to the 2016 Regulations. The formatting error relates to incorrect linear box markings in the disease tolerance tables in parts 2 and 3 of Schedule 3 to the 2016 Regulations which confuse the interpretation of group tolerances.

The amendments made by these Regulations do not amount to changes in policy and will not have a substantive impact on current practices, because the underlying processes are unchanged.

5. Consultation

The Welsh Government has not undertaken a full public consultation on these Regulations, but has carried out a targeted consultation with organisations including the British Society of Plant Breeders, the Agricultural Industries Confederation, the Agriculture and Horticulture Development Board, the National Association of Agricultural Contractors, Horticulture Wales and the National Farmers Union Cymru and Farmers Union of Wales. These industry organisations represent the businesses directly affected by the amendments

across Great Britain and Wales and have raised no concerns with the Welsh Government's approach.

6. Regulatory Impact Assessment (RIA)

These Regulations make technical amendments which are consequential to the already directly applicable Phytosanitary Conditions Regulations and no major policy impact is anticipated. The Regulations are not expected to have a significant impact on businesses, charities or the public sector in Wales.

As such, no RIA has been prepared. This is in line with the Welsh Ministers' RIA Code.