

Explanatory Memorandum to the Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department of the Welsh Government and is laid before the National Assembly for Wales 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 Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

7 March 2019

PART 1

1. Description

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

The amendments implement EU decisions on the equivalence of forest reproductive material produced in countries outside the European Union and set out the revised requirements which apply in Wales.

These amendments are necessary to bring Welsh legislation in relation to plant health (forestry) up to date with our obligations under EU law and in line with the law in England and Scotland.

2. Matters of special interest to the Constitutional and Legislative Affairs 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 the SI because it is giving effect to EU provisions and we are not amending primary legislation.

3. Legislative background

Council Directive 1999/105/EC (“the Forest Reproductive Material Directive”) (OJ No L 11, 15.1.2000, p17) establishes an EU-wide system for the marketing of forest reproductive material such as seed, cuttings and planting stock used for forestry purposes. It contains measures to be taken to ensure full traceability of the material.

The Forest Reproductive Material Directive is implemented in Great Britain, by the Principal Regulations. Similar but separate legislation operates in Northern Ireland. Since the Forest Reproductive Material Directive came into force, a series of EU decisions have been adopted under this Directive in relation to the importation of forest reproductive material from countries outside the EU.

These Regulations 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 Forest Reproductive Material (Great Britain) (Amendment) (Wales) Regulations 2019 are being made pursuant to powers in the European Communities Act 1972. The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union (S.I. 2010/2690).

Section 2(2) of the European Communities Act 1972 provides discretion as to which procedure to use. As we are obliged to implement EU law and we are not amending primary legislation, these Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

The Forest Reproductive Material Directive ensures that forest reproductive material produced in the EU is traceable through the collection and production process to registered sources of basic material (e.g. trees from which the seed is collected or cuttings taken). This allows those who buy forest reproductive material to have sufficient information about the material, such as provenance and origin.

Since 2005, various EU decisions have authorised the importation into the EU of certain forest reproductive material from listed countries outside the EU. Authorisation has aimed at ensuring that the imported material afforded equal guarantees to forest reproductive material produced in the EU in accordance with the Forest Reproductive Material Directive.

Council Decision 2008/971/EC, as amended, and Commission Decision 2008/989/EC currently set out the circumstances in which member States may permit the importation of forest reproductive material from countries outside the EU.

Council Decision 2008/971/EC, which was updated by Decision No. 1104/2012/EU, allows certain categories of forest reproductive material within a wide selection of species to be imported from listed countries provided that various requirements are met. The rules for the certification of this material in these countries, together with the conditions of importation are considered to provide equivalent guarantees to forest reproductive material produced in the EU.

Council Decision 2008/989/EC, on the other hand, authorises member States to take decisions in relation to the importation of a small range of reproductive material from a limited number of countries. It has been decided that this derogation should be implemented in full. The amendments made by this instrument will ensure that any such material which is imported into Wales will provide equivalent guarantees to those applicable to forest reproductive material produced in the EU. The Regulations also provide for references in the Principal Regulations to Council Decision 2008/971/EC to be read as amended from time to time.

Import levels of forest reproductive material from non-EU countries amounts to less than 1% of the total volume of imports of forest reproductive material into Wales. Therefore, adopting these provisions does not result in significant changes to current processes and procedures.

5. Consultation

No formal consultation was considered necessary due to the small number of businesses that import forest reproductive material from third countries outside the European Union.

6. Regulatory Impact Assessment (RIA)

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.

With regard to the Government of Wales Act 2006 this legislation has no impact on the statutory duties (sections 77-79) or statutory partners (sections 72-75).