

SL(5)592 – The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020

Background and Purpose

These Regulations amend certain domestic marketing legislation to update and amend the pest requirements on plant reproductive material intended 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 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 in relation to RNQPs (“the 2020 Directive”). These Regulations also amend regulations in order to ensure correct implementation of Council Directives 2008/72/EC and 2008/90/EC and correct formatting errors in the tables in Parts 2 and 3 of Schedule 3 to the Seed Potatoes (Wales) Regulations 2016.

Procedure

Negative.

Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2(v): that for any particular reason its form of meaning needs further explanation

1. Correction of formatting

The preamble to, and Explanatory Notes accompanying, these Regulations explain that the tables in Parts 2 and 3 of Schedule 3 to the Seed Potatoes (Wales) Regulations 2016 (“the 2016 Regulations”) are amended to correct formatting issues. Although the changes in the table can generally be linked to a need to correct the formatting and increase clarity, there are two sets of changes which might be interpreted as being more substantive. It is noted that the collective group tolerances (column 4) for “Group VI” in the table contained in Part 2 and “Group V” in the table contained in Part 3 have been amended from “-” to “)”, which appears to change the tolerance from nil to 6%. The same issue arises in relation to the Welsh version of these Regulations.

Standing Order 21.2(vii): that there appear to be inconsistencies between the meaning of its English and Welsh texts

2. English used in the Welsh version



In the Welsh text, in the first table inserted by regulation 5(4)(c), for Group VI, the text entry in the second column, 'Nil', is in English.

Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(ii): that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

3. Choice of procedure

These Regulations are made in exercise of powers under sections 16(1), (1A), (3), (4) and 36 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act") and section 2(2) of the European Communities Act 1972 ("the 1972 Act"). The 1964 Act provides for regulations to be made under the negative procedure and the 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply.

The Explanatory Memorandum states that:

"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."

The Committee accepts that the choice of negative procedure is appropriate given these reasons.

4. Timeframe for transposition

Article 11 (Transposition) of the 2020 Directive requires Member States to transpose the 2020 Directive into their law by 31 May 2020. Although there has been a delay in transposing the 2020 Directive, it is acknowledged that the United Kingdom is no longer a Member State of the European Union and that there are exceptional circumstances surrounding the Coronavirus pandemic.

5. Ambulatory amendments

Regulations 5(2) and 6(3) of these Regulations insert amendments which seek to update the definition of "Directive 2014/98/EU". The reason for this amendment is explained in the respective footnotes to those regulations (footnote (2) on page 10 and footnote (1) on page 18) by reference to section 26 of the Legislation (Wales) Act 2019 ("the 2019 Act"). The footnotes which include reference to section 26 of the 2019 Act are inserted alongside the amendments made by these Regulations.

It is noted that the "Guidance for preparing Welsh legislation - Parts 2 and 3 of the Legislation (Wales) Act 2019" states:

"Welsh legislation may also need to amend legislation to which Part 2 of the 2019 Act does not apply (such as an Act of the UK Parliament, UK subordinate legislation, or any Welsh legislation enacted before 2020). In that case:

- *Part 2 of the 2019 Act will apply to the provisions of the amending legislation, but*



- *the 1978 Act [the Interpretation Act 1978] will apply to any material that is inserted into the other legislation.”*

As such, it appears that the reference to section 26 of the 2019 Act should instead refer to section 20A of the Interpretation Act 1978, which applies to subordinate legislation by virtue of section 23 of the Interpretation Act 1978.

6. Cross-references in Welsh text

In the Welsh text of these Regulations, the cross-references in regulations 5(5)(b)(i) and (ii), which amend the 2016 Regulations, do not seem to reference the correct paragraphs in the Welsh text of those 2016 Regulations as published on the legislation.gov website.

Implications arising from exiting the European Union

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 will form part of retained EU law after the implementation period.

Government Response

A Welsh Government response is required in relation to both Technical Points (1 and 2) and Merits Points 5 and 6.

Legal Advisers

Legislation, Justice and Constitution Committee

17 August 2020

