

# SL(5)112 – The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

## Background and Purpose

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These **Regulations** continue to implement Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

They also implement:

- Commission Implementing Directive 2014/96/EU on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council Directive 2008/90/EC;
- Commission Implementing Directive 2014/97/EU implementing Council Directive 2008/90/EC as regards the registration of suppliers and of varieties and the common list of varieties;
- Commission Implementing Directive 2014/98/EU 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.

They revoke and replace the **Marketing of Fruit Plant Material Regulations 2010**.

## Procedure

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Negative

## Technical Scrutiny

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No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

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Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **Late transposition of EU law and breach of the 21 day rule**

The transposition date for the various EU Implementing Directives was 1 January 2017. The Committee notes the Welsh Government's helpful explanation for the late transposition and the commitment made to the European Commission to bring the Regulations into force by the extended deadline of 19 June 2017.

Given the Welsh Government's reliance on the UK Government in preparing these Regulations, it appears to the Committee that the Welsh Government was always likely to breach either the 21 day rule or the extended deadline of 19 June 2017. In this case, the Welsh Government chose to breach the 21 day rule rather than the extended deadline; these Regulations come into force only 3 days after being laid before the Assembly.

The 21 day rule is designed to ensure that people are given time to arrange their affairs in preparation for new law coming into force. The Committee would be grateful if the Welsh Government could confirm:



(a) what pro-active steps it took to advise all appropriate stakeholders that these Regulations would come into force on 19 June 2017, and (b) when were those pro-active steps taken.

The Committee therefore reports this instrument under:

- Standing Order 21.3(ii), in that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly;
- Standing Order 21.3(iv), in that it inappropriately implements European Union legislation.

## Implications arising from exiting the European Union

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The Welsh Ministers made these Regulations using powers given to them under the **European Communities Act 1972**. At present, it is unclear how executive powers in the field of plant health and seeds will be exercisable when the UK exits the European Union. Linked to this, it is unclear how the Assembly's competence in the field of plant health and seeds will be affected. For example, it is unclear whether / how powers to regulate plant health and seeds will be subject to common UK framework rules.

Also, this may be one example of EU law requiring correction before it can be workable in a UK-only context. For example, EU Directive 2014/96 requires certain labels to include the words "EU rules and standards". It is unclear whether a reference to "EU law and standards" would be workable outside of the EU; this will depend on the relationship the UK has with the EU after exit.

## Government Response

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I accept the points raised by the Committee and acknowledge the deadline for transposing the EU Directives was missed and the 21 day rule was breached, for the reasons set out in the Explanatory Memorandum.

The 2017 Regulations formalise the previous voluntary scheme administered by the Animal and Plant Health Agency (APHA) and the main industry representative organisation, the Nuclear Stocks Association (NSA). One company in Wales is directly affected by this legislation who are a member of the NSA and, at a meeting in December 2016, the NSA were updated on progress in implementing the EU Regulations. At the meeting all parties were aware the Regulations would miss the transposition date of 1 January 2017 and it was unlikely the Regulations would come in to force until May 2017 at the earliest. In January 2017, guidance for commercial growers regarding the new scheme was published. Inspections for the certification scheme are conducted annually from June and the industry will have been preparing for these in line with the new requirements.

### Legal Advisers

**Constitutional and Legislative Affairs Committee**

**22 June 2017**

