

**Explanatory Memorandum to
The Vegetable Seed (Wales) (Amendment) Regulations 2011**

This Explanatory Memorandum has been prepared by the Department for Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Vegetable Seed (Wales) (Amendment) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Elin Jones
Minister for Rural Affairs
29 March 2011

1. Description

These Regulations implement the marketing aspect of Commission Directive 2009/145/EC and amend the Vegetable Seed (Wales) Regulations 2005 (the “Principal Regulations”) in order to permit the marketing of conservation and amateur varieties of vegetables in Wales.

2. Matters of special interest to the Constitutional Affairs Committee

The Vegetable Seed (Wales) (Amendment) Regulations 2011 are being made in English and Welsh. The Principal Regulations were made in English only due to the size of the text and the highly technical nature of the statutory instrument. The Principal Regulations are aimed mainly at industry rather than the general public or public voluntary bodies that use the Welsh language.

3. Legislative background

These Regulations are made in exercise of powers under the Plant Varieties and Seeds Act 1964. Those powers are exercisable in relation to Wales, by the Welsh Ministers.

These Regulations partly implement Commission Directive 2009/145/EC. The Seeds (National Lists of Varieties) (Amendment) Regulations 2011 implement the national listing aspect of the Directive and facilitates the acceptance of conservation and amateur vegetable varieties onto the UK National List.

This statutory instrument follows a negative resolution procedure.

4. Purpose & intended effect of the legislation

Commission Directive 2009/145/EC provides for certain derogations of national listing and marketing provisions for conservation and amateur varieties of vegetables.

The aim of the Directive is to aid the preservation of plant genetic resources for traditionally grown varieties and for varieties with no intrinsic economic value. In practice, this means encouraging the marketing of conservation varieties and varieties intended for amateur gardeners.

The UK has traditionally under-implemented existing EU legislation in relation to the listing of amateur vegetable varieties which means that the provisions of the Directive will introduce additional regulatory burden and costs for companies which supply vegetable seed to the amateur market.

The Welsh Ministers are under a statutory duty (by virtue of section 80 of the Government of Wales Act 2006) to give effect to the requirements of EU law, including Commission Directive 2009/145/EC. Non-implementation would mean a risk of infraction from the European Commission.

5. Consultation

Consultation coordinated by The Food and Environment Research Agency (FERA) on an England and Wales basis was completed between 4 August and 29 October 2010. The consultation proposed that to achieve the main objective of Commission Directive 2009/145/EC, implementation should be proportionate in order to minimise any potential negative impact on the vegetable seed market in the UK. The marketing of conservation and amateur varieties will be encouraged through simpler requirements, giving a cheaper and quicker route to National Listing and minimising seed production costs.

The consultation documents identified an impact on unlisted vegetable varieties already on the market and proposed that seed companies should apply for listing of these varieties from the date of implementation. The consultation also proposed a transitional period to allow seed companies time to comply with the legislation.

Three responses were received from Wales, out of the overall 15. In general, respondents supported the proposed pragmatic and proportionate approach and favoured the phased implementation of the Directive.

6. Regulatory Impact Assessment (RIA)

This impact assessment has been prepared by FERA taking into consideration the full effect of Commission Directive 2009/145/EC on businesses in England and Wales.

6.1 Options

1. Transpose and implement new legislation and regularise existing listing requirements in a pragmatic way, in partnership with industry to minimise any possible negative impacts on businesses.
2. Do not transpose and continue to under-implement existing listing requirements. (Do nothing)
3. Transpose new legislation but do not implement, and continue to under-implement existing listing requirements.

Option 2 and 3 would lead to infraction proceedings by the European Commission against the UK.

Option 1 is the preferred option because it complies with Commission requirements in a cost effective and proportionate way and is supported, in principle, by industry.

6.2 Costs

Option 2 and 3 would not require additional costs from industry. However, the European Commission would penalise the UK with substantial fines for non-transposition and non-implementation.

Option 1 would mean additional costs for industry. Applicants wishing to list and market amateur or conservation varieties of vegetables will have to pay an administrative one-off payment: £175 per conservation variety and £100 per amateur variety. These fees will cover assessing applications and registering varieties by FERA and administrative costs related to providing a description of varieties and seed sample submission.

The overall cost of listing and marketing of conservation and amateur varieties of vegetable would be significantly lower than those of commercial varieties because of reduced testing and listing requirements. The average corresponding fee for listing commercial vegetable varieties is currently around £365 together with an additional DUS testing fee of up to £1200.

It is proposed that there will be a transitional period of 2 to 3 years to allow companies to list vegetable varieties in their catalogues and spread the cost associated with the requirements of the new legislation.

Please note that these fees will be re-assessed as part of FERA's overall review of statutory fees.

6.3 Benefits

Conservation Varieties – the new legislation will allow the legal marketing of seed of conservation vegetable varieties.

Amateur Varieties – the new legislation will regularise national listing requirements in a pragmatic way, in partnership with industry to provide a legal and proportionate system.

6.4 Duties

Equality of opportunity - There are no limitations on meeting the requirements of Commission Directive 2009/145/EC on the grounds of race, disability or gender. Conditions apply equally to all individuals and businesses involved in the activities covered by the Directive.

Sustainable development - The overall impact of the monetised and non-monetised costs and benefits and sustainability issues considered to be moderately negative. Overall the net benefit in terms of costs is negative as the industry will be incurring an overall additional cost to list amateur and conservation varieties of vegetable species. The proposed transitional period of 2 to 3 years would mitigate these costs and allow consumer choice of vegetable varieties to be maintained while the industry adjusts to the listing process.

6.5 Competition Assessment

While Commission Directive 2009/145/EC relaxes the normal listing requirements, its implementation will still result in an increased burden for some UK stakeholders who market currently unlisted amateur vegetable varieties.

The requirements of the Directive could potentially and indirectly limit the number and range of amateur vegetable seed suppliers by raising costs for micro and small-sized organisations and raising the costs for new entrants to this market. The Directive could also potentially restrict the number of amateur varieties on the market thereby limiting consumer choice. Larger companies are likely to be able to list more of their varieties currently marketed than the smaller companies. There is a risk that smaller and micro-sized enterprises may be adversely affected by the increased costs to list amateur vegetable varieties but it is anticipated that the proposed 2 to 3 years transitional period for compliance will alleviate this risk. A period of grace would also allow the current vegetable varieties to remain available without limiting consumer choice.

6.6 Post implementation review

The European Commission will review and evaluate the implementation of Directive 2009/145/EC by 31 December 2013. The UK will contribute towards this review obligation.

Review approach - Level of uptake will be analysed and compared with catalogues of vegetable seed companies. Stakeholders will be informally consulted.

Monitoring arrangements - Receipt of listing applications and information provided by companies by 30 April each year regarding the amount of vegetable seed marketed and produced.